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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO. C08 2248

NOTICE OF MOTION AND MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT [Fed. R. Civ. Pro. 12(b)(6)]

Hearing Date: September 5, 2008
Time: 9:00 A.M.
Location: Courtroom 6
Judge: Hon. Ronald Whyte

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

NOTICE IS HEREBY GIVEN that Defendant KELLER WILLIAMS REALTY, INC., through its attorneys of record herein, will on the date referenced above, before this Court, move the Court for an order dismissing Plaintiffs' Complaint as to KELLER WILLIAMS REALTY,

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INC.

Said Motion will be made on the grounds that claims for relief as against KELLER WILLIAMS REALTY, INC. are fatally deficient on their face, fail to sufficiently plead claims for relief against KELLER WILLIAMS REALTY, INC., and Counts 4 and 5 as stated are time-barred.

This Motion is based upon this notice, the attached Declaration of Meagen E. Leary, the attached Memorandum of Points and Authorities, the Request for Judicial Notice, and upon the complete files, records and papers on file in this matter, and on such other oral and documentary evidence as may be presented at the hearing of this motion.

GORDON & REES LLP

Dated: July 30, 2008

By: _____
DION N. COMINOS
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Attorneys for Defendant KELLER WILLIAMS REALTY, INC.

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: Steve Trachsel, et al. v. Ronald Buchholz, et al.
United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

PROOF OF SERVICE

I am a citizen of the United States. My business address is 275 Battery Street, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within action.

On July 30, 2008, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

NOTICE OF MOTION AND MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT [Fed. R. Civ. Pro. 12(b)(6)]

☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM**: with the United States District Court, Northern District, to all parties listed on the court's proof of electronic service.

☐ **BY FACSIMILE**: by transmitting by facsimile to the number(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

☐ **PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ **MAIL**: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California to the offices of the addressee(s) listed below:

☐ **OVERNIGHT DELIVERY**: I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2008 at San Francisco, California.

Sandra Sarmiento

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NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company, Plaintiffs, vs. RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive, Defendants.	CASE NO. C08 2248 **DEFENDANT KELLER WILLIAMS REALTY, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT** **[Fed. R. Civ. Pro. 12(b)(6)]** Hearing Date: September 5, 2008 Time: 9:00 A.M. Location: Courtroom 6 Judge: Hon. Ronald Whyte

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I. INTRODUCTION

Plaintiffs' claims against defendant KELLER WILLIAMS REALTY, INC. ("KWRI") must be dismissed with prejudice as they fail to constitute a valid basis for a legal action against this entity. Although Plaintiffs assert numerous allegations and plead a number of different legal theories (including RICO and securities fraud claims), they fail to specify any allegedly wrongful conduct on the part of KWRI which would give rise to an actionable claim for relief. Further, all of Plaintiffs' claims for relief suffer from fatal pleading deficiencies. Accordingly, a dismissal without leave to amend is warranted.

KWRI is a Texas-based real estate company with more than six hundred offices located across the United States and Canada. Despite the fact that KWRI is not alleged to have an agency relationship with any of the parties currently named in the lawsuit, Plaintiffs attempt to link KWRI to the allegedly wrongful conduct by asserting the unsubstantiated allegation that KWRI is somehow vicariously liable for the acts of the other defendants. Standing alone, this lone conclusory allegation is woefully insufficient to state a proper claim for relief against KWRI, even at the pleadings stage. Since Plaintiffs have failed to state any legally cognizable claims for relief against KWRI, their Complaint should be dismissed with prejudice as to this entity.

II. FACTUAL & PROCEDURAL HISTORY

Plaintiffs filed their Complaint on or about April 30, 2008. The Complaint was served upon KWRI on or about May 6, 2008. Plaintiffs' Complaint alleges eighteen causes of action against thirteen different defendants. (Request for Judicial Notice ("RJN"), Exhibit A.) As against KWRI, Plaintiffs allege the following counts:

- Count 3 for Violation of Section 1962(d) of the RICO Act
- Count 4 for Violation of Section 10B and Rule 10B-5 of the 1934 Act
- Count 5 for Violation of Section 12(a) of the 1933 Act
- Count 6 for Violation of California Business & Professions Code Section 17200, et seq.
- Count 11 for Conspiracy
- Count 16 for Joint and Several Liability of Management Principals and Materially Aiding

Personnel Pursuant to California Corporations Code sections 25501, 25401 and 25504

- Count 18 for Joint and Several Liability of Management Principals and Materially Aiding Personnel Pursuant to California Corporations Code section 25503, 25102(f) and 25510.

Defendants Jonathan Vento, Grace Capital LLC dba Grace Capital, LLC, Donald Zeleznak, Z-Loft, and Zeleznak Property Management LLC dba Keller Williams Realty, an Arizona limited liability company have also filed a Motion to Dismiss, highlighting the myriad deficiencies in Plaintiffs' Complaint which is set for hearing on August 8, 2008.[1]

Plaintiffs allegedly invested a real estate development called the Solomon Towers project, located in Arizona (hereinafter "project."). The investments for the project were made through defendant Solomon Capital, LLC, an investment firm. According to the Complaint, defendants Ronald Buchholz, Charice Fischer and RDB Development, LLC all worked with or for Solomon Capital in connection with obtaining investment capital from Plaintiffs (collectively the "Solomon Capital defendants"). Request for Judicial Notice ("RJN"), Exhibit A, ¶¶ 31-43. In February 2005, the Solomon Capital defendants allegedly gave a presentation to Plaintiffs regarding the project, wherein they represented that the project constituted a viable investment opportunity. *Id.* at ¶ 46. In March 2005, Plaintiffs allegedly entered into an Operating Agreement whereby they agreed to invest funds with Solomon Towers, LLC for the project. *Id.* at ¶ 47. The project is now reportedly in financial distress and Plaintiffs allege that the Solomon Capital defendants misrepresented the investment opportunity, to Plaintiffs' detriment. *Id.* at ¶75.

In April 2005, Solomon Towers, LLC purchased property for the project from defendant Z-Loft, LLC. Z-Loft LLC is apparently owned and managed by defendant Donald Zeleznak. Z-Loft, formerly known as Soho Lofts, LLC, had allegedly purchased the subject property in July 2002. Exhibit A, ¶¶ 55, 56. According to the Complaint, Z-Loft sold the property for a significant amount more than what it had paid three years prior, and realized a sizeable profit.

[1] KWRI attempted to meet and confer with Plaintiffs' counsel regarding the Complaints' failure to properly allege claims for relief against KWRI. Declaration of Meagen E. Leary ("Decl. of MEL"), ¶¶ 2-4, Exhibits 1,3. However Plaintiffs' counsel has refused to amend its pleadings or dismiss KWRI, leaving KWRI no choice but to file the instant motion. Id., Exhibit 2.

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Id. at ¶¶ 55-57. ZPM and Zeleznak are alleged to have acted as both the real estate agent and the broker in connection with the April 2005 sale. Due to the increased property price and the large commissions received by ZPM and Zeleznak, the Complaint labels the sale of the property as a "pump and dump" transaction and/or a "wash sale." *Id.* at ¶¶ 59, 78. Aside from Mr. Zeleznak's alleged involvement with the Solomon Towers presentation, it is not clear from the Complaint how the Solomon Capital defendants had any other involvement with the Z-Loft, ZPM, or Grace Capital defendants prior to the sale of the Solomon Towers property in April 2005. However, Plaintiffs allege that defendants Buchholz, Fischer and Solomon Capital "shared in the ill-gotten gains from the 'pump and dump' transaction to the detriment of the Plaintiff investors." Exhibit A, ¶ 58. Plaintiffs' Complaint asserts no specific facts regarding *any* allegedly wrongful acts or omissions on the part of KWRI.

III. RULE 12(B)(6) STANDARDS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint must be dismissed if it fails to state a relief upon which relief can be granted. Dismissal under Rule 12(b)(6) is proper where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990); Schwarzer, et al.; *California Practice Guide – Federal Civil Procedure Before Trial* (2008 Ed.), at 9-53, ¶ 9:187. The issue on a motion to dismiss for failure to state a valid claim is not whether the plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support the putative claims asserted. *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984); *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

While the Court must accept as true all material allegations in the complaint in evaluating a Rule 12(b)(6) motion, *e.g., Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994), the Court need not accept conclusory legal allegations "cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). Similarly, the Court is not bound to accept unreasonable inferences or unwarranted deductions of fact. *Western Mining Counsel v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 n.8

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(3d Cir. 1997). Dismissal is proper if a complaint is vague, conclusory, or fails to set forth any material facts in support of the allegation. *See North Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 583 (9th Cir. 1983). Plaintiff bears the burden of pleading facts sufficient to state a claim; courts will not supply essential elements of a claim that were not initially pled. *See Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988).

In the RICO context, "conclusory allegations are insufficient to preclude dismissal." *Howard v. America Online, Inc.*, 208 F.3d 741, 750 (4th Cir. 2000), citing *Associated Gen. Contractors of America v. Metropolitan Water Dist.*, 159 F.3d 1178, 1181 (9th Cir. 1998). *See also Jennings v. Emry*, 910 F.2d 1434, 1438 (7th Cir. 1990) ("In pleading [RICO] predicate acts, conclusory allegations that various statutory provisions have been breached are of no consequence if unsupported by proper factual allegations"); *Flores v. Emerich & Fike*, 416 F.Supp.2d 885, 911 (E.D.Cal. 2006) (conclusory allegations of a "laundry list of purported predicate acts" insufficient to sustain a RICO claim); *Stone v. Baum*, 409 F.Supp.2d 1164, 1173 (D.Ariz. 2005) (motion to dismiss granted and sanctions awarded defendant, the court noting that "[c]onclusory and vague allegations will not support a cause of action … [t]he complaint must contain sufficient details so that th[e] court can determine whether or not a justifiable claim exists …); *Jones v. Nat'l. Commun. and Surveillance Networks*, 409 F.Supp.2d 456, 465 (S.D.N.Y. 2006) (allegations that "are largely conclusory, providing no factual or legal basis for defendants' liability" held to be insufficient to state RICO claim); *Starfish Investment Co. v. Hansen*, 370 F.Supp.2d 759, 768 (N.D.Ill. 2005) ("A RICO plaintiff is required, however, to allege sufficient facts to support each element of its RICO claim; '[i]t is not enough for plaintiff to simply allege these elements in boilerplate language.'")

Where causes of actions for fraud, or those premised upon fraud are alleged such as all claims asserted against KWRI herein, Federal Rule of Civil Procedure Rule 9(b) applies and requires "particularized allegations of the circumstances constituting fraud." *In re GlenFed, Inc. Securities Litig.*, 42 F.3d 1541, 15407 (9th Cir. 1994). Rule 9(b) requires the pleader to set forth the time, place, and specific content of the alleged fraud. *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *Gottreich v. San Francisco,* 552 F.2d

866, 867 (9th Cir. 1977). Conclusory or vague allegations are inadequate to satisfy the "particularity" requirement of Rule 9(b). *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). Accordingly, the complaint must contain allegations that are "specific enough to give defendants notice of the particular misconduct which is alleged to cause the fraud so that they can defend against the charge and not just deny that they have done anything wrong." *Smegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985); *Wool v. Tandem Computers Inc.* 818 F.2d 1433, 1439-40 (9th Cir.1987) (Rule 9(b) requires that the conduct of *each* defendant be specified separately.)

IV. ARGUMENT

A. Plaintiffs' Complaint is Fatally Deficient as to KWRI

Plaintiffs' Complaint does not allege any wrongdoing on the part of KWRI that could possibly serve as a basis for any of the counts asserted. In fact, the *sole* alleged relationship of KWRI to the operative facts in question is the conclusory allegation that KWRI is vicariously liable for the other Defendants' actions. However, the Complaint does not allege any legal mechanism or factual bases through which KWRI could become vicariously liable for the claims in question.

Specifically, Paragraphs 29, 3and 79 (which contain the only allegations of even minimal substance relating to KWRI) do not, on their face, support any actionable claims against the moving party.

For its part, Paragraph 29, conclusorily states that "KELLER WILLIAMS is vicariously liable for the actions of its franchisee, ZPM which materially assisted Defendants to perpetuate the fraudulent enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for the over-inflated and above fair market value price." Paragraph 29 clearly fails to set forth the essential elements of any claim against KWRI. First, Paragraph 29's reference to vicarious liability is insufficient to subject KWRI to any claims in the Complaint since, in order for vicarious liability of a franchisor to arise, a principal agency relationship must be alleged and established. *Cislaw v. Southland Corp.* 4 Cal.App. 4th 1284, 1288 (1992). In the context of franchisors, a principal-agency relationship exists only when the

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franchisor can exercise complete control over the franchisee. *Id., Kaplan v. Coldwell Banker Residential* 59 Cal.App.4th 741, 745 (1997). Plaintiffs have not alleged an agency relationship between KWRI and its purported franchisee ZPM, let alone the existence of "complete" control.[2] Due to the severe and punitive nature of RICO, claims of vicarious liability in connection with RICO counts must additionally plead and prove (beyond the minimal requirements noted above), that the principal was actively involved in the fraud of its agents. *Dakis on behalf of Dakis Pension Plan v. Chapman* 574 F. Supp. 757, 760 (1983); *United Centrifugal Pumps v. Schotz*, 1991 WL 274232 *4 (N.D. Cal.); *Thrailkill v. Champion Ford, Inc.* 776 F. Supp. 1486, 1488 (D.N.M 1991) (to impose liability "upon the mere presence of a franchisee/franchisor relationship without more would be to 'defeat the structure established in the statute and to convert it into a blunt instrument, contrary to the intent of Congress'"; where "a corporation derive[s] a benefit from the illegal conduct without any knowledge or acquiescence…vicarious liability is inappropriate.").[3]

Paragraphs 3 and 79 which attempt to label KWRI (along with ZPM and Zeleznak), as the "agent and broker" for the transaction at issue do not rectify Paragraph 29's deficiencies The mere identification of a party as an agent or broker is not grounds for any claim asserted within the Complaint. Without more, Plaintiffs' Complaint as against KWRI is fatally deficient on its face. Beyond this, however, the claims for relief are each individually defective and thus independently subject to dismissal.

B. Plaintiffs' RICO Count Is Improperly Pled (Count 3)

To state a claim for relief under Racketeer Influenced and Corrupt Organizations Act (RICO) the plaintiffs must meet two pleading burdens. First, they must properly allege all of the

[2] Plaintiffs failure to do so is likely a result of the fact that ZPM is not even a franchisee of KWRI.

[3] The ABA Task Force Report has stressed that vicarious liability theories "must be applied cautiously" to civil RICO:

> Many of the perceived abuses of Civil RICO involve situations where a corporation is made a RICO defendant based upon acts of its employees or agents. These acts may be contrary to corporate policy. Any "benefits" accruing to the corporation from these acts are often at most secondary to the primary goal of the offender to benefit himself; sometimes the corporation itself is victimized by the offenses…It is particularly incongruous that a statute creates for the primary purpose of protecting legitimate business entities from infiltration by criminal elements should result in liability for treble damages by the infiltrated business. (ABA Task Force Report, Report of the ABA Ad Hoc Civil RICO Task Force (March 28, 1985).

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elements of a RICO violation, specifically, that (1) a "person," (2) through the commission of two or more predicate acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. Second, the plaintiffs must allege that they were injured in their business or property by reason of the conduct constituting the RICO violation. 18 U.S.C. §§ 1962(c), 1964(c); *Sedima S.P.R.L. v. Imrex* Co., 473 U.S. 479, 496 (1985).[4]

Plaintiffs' RICO claim against KWRI is for alleged violation of section 1962(d), or conspiracy to commit RICO violations. 1962(d) states "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section." Bare or conclusory allegations of participation in a conspiracy under Section 1962(d) will not avail on a motion to dismiss. *Com-Tech Assocs. v. Computer Assocs. Int'l*, 753 F. Supp. 1078, 1092 (E.D.N.Y. 1990). Conspiracy claims must state with specificity what the agreement was, who entered into the agreement, and what actions were taken in furtherance of it. *Vietnam Veterans of Am., Inc. v. Guerdon Indust.*, 644 F. Supp. 951, 959 (D. Del. 1986). Plaintiffs' Complaint is devoid, however, of any specific allegations that KWRI violated or conspired to violate section 1962. Rather Plaintiffs make blanket assertions that the defendants "conspired between themselves to use or invest the proceeds from their activities to either acquire an interest in, or establish, or operate an Enterprise, activities of which affect interests of intrastate commerce." KWRI is left to guess as to what misconduct is being charged as against it.

1. Plaintiffs Have Not Adequately Pled the Necessary Elements of a RICO Predicate Act

Plaintiff has not, and cannot through amendment, plead the necessary elements of the purported predicate acts upon which they attempt to rely in asserting a RICO claim. Section

[4] The Ninth Circuit has approved of the Northern District's use of a RICO Standing Order, which prescribes the pleading standards specifically applicable to RICO claims. *Wagh v. Metris Direct*, 348 F.3d 1102, 1108 (9th Cir. (Cal.) 1993) noting that many federal district courts, including individual judges in the Northern, Central Districts of California, "have issued standing orders in civil RICO cases requesting plaintiff's counsel provide certain details concerning their RICO claim, citing to *May v. U.S. Chamber of Commerce* 1996 WL 116829 (court ordered the plaintiff to "include a RICO statement consistent with the standing orders of the court"). The case statement requirements in *May v. U.S. Chamber of Commerce* are instructive here.

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1961(1) of RICO lists as a "racketeering activity" "any act which is indictable under…Title 18 section 1341 (relating to mail fraud), section 1343 (relating to wire fraud)…" Section1341 prohibits schemes or artifices to defraud conducted through the use of "any private or commercial **interstate** carrier…." (emphasis added). Section 1343 prohibits schemes or artifice to defraud executed through the use of wire, radio, or television communication in **interstate or foreign commerce**…" (emphasis added). Plaintiffs make the conclusory assertion that the defendants have engaged in mail and wire fraud. In relying upon mail or wire fraud, Plaintiffs are charged with pleading and providing the criminal conduct that constitutes the fraud. *Furman v. Cirrito* 828 F.2d 898, 900 (2d. Cir. 1987). No such conduct on the part of KWRI has been alleged. Count 1, the claim for relief under which the mail and wire fraud allegations are contained, is not even asserted against KWRI. Plaintiffs' Complaint does not allege any specific telephone calls, letters, electronic correspondence, facsimile or other interstate communication in order to demonstrate mail or wire fraud.

Moreover, by their own allegations, Plaintiffs are foreclosed from asserting mail or wire fraud as predicate acts because the Complaint alleges activities that affect *intrastate* commerce rather than interstate commerce. Specifically, Paragraph 91, under Count 1, states:

> Defendants and DOES 1-50 have used or caused to be used the mails and wires and **intrastate** commerce in furtherance of their scheme and artifice to defraud purported investors…(emphasis added)

Paragraph 97 under Count 1 states "[t]he Enterprise alleged herein, at all times mentioned herein, engaged in activities which affect *intrastate* commerce." (emphasis added). Paragraph 111 under Count 3 states "Defendants and DOES 1-50 have conspired between themselves to use or invest the proceeds from their activities to either acquire an interest in, or establish, or operate an Enterprise, the activities of which affect interests of *intrastate* commerce." (emphasis added). Plaintiffs' failure to sufficiently state a predicate act is grounds for dismissal pursuant to Rule 12(b)(6).

2. Plaintiffs Have Not Properly Pled a RICO "Enterprise"

It is axiomatic that there must be a distinction between the entity or individual charged with the conduct that constitutes the RICO predicate act, and the alleged "enterprise." The two

cannot be one in the same. See *Sedima* 473 U.S. at 496-97; *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1534 (9th Cir. 1992); *Schrieber Dist. Co. v. Serve-Well Furniture*, 806 F.2d 1393, 1397 (9th Cir. 1998); *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984). In the present Complaint, the two are one in the same. Plaintiffs, in Paragraph 100 allege "Defendants used the proceeds from their racketeering activity to further fund and operate Enterprises under Defendants' name. The Enterprises were entitled, but not limited to, SOLOMON CAPITAL, Z-LOFT, ZPM, GRACE CAPITAL, and RDB DEVELOPMENT…" This allegation alone precludes Plaintiffs' RICO claim as a matter of law. Because Plaintiffs have alleged that SOLOMON CAPITAL, Z-LOFT, ZPM, GRACE CAPITAL, and RDB DEVELOPMENT committed the acts that allegedly violated Section 1341 and 1343, Plaintiffs cannot also point to these same parties as constituting an "enterprise" for purposes of RICO. *Id.*

Furthermore, while an enterprise may consist of a group of persons or entities associated together for a common purpose of engaging in a course of conduct prohibited under RICO, Plaintiffs must allege specifically who or what the association in fact consisted of, and what conduct was undertaken by such association-in-fact. *United States v. Turkette* 452 U.S. 576, 582-583 (1981). Although Paragraph 86 alleges an association in fact, no other specifics are alleged. The enterprise cannot be defined solely by the wrongdoing. However, in Paragraph 78, Plaintiffs do just that, defining the enterprise by defendants' wrongdoings, yet omitting any specifics of who or what the association in fact consisted of. In sum, Plaintiffs have therefore not pled a valid RICO enterprise.

3. Plaintiffs Have Not Pled a Pattern of Racketeering Activity

Plaintiffs' Complaint fails to meet the "pattern" requirement of RICO. 18 U.S.C. §1962(c). To allege a "pattern of racketeering activity" plaintiffs are required to allege at least two predicate acts, within ten years of each other. 8 U.S.C. § 1961(5); *H.J. Inc. v. Northwestern Telephone* Co., 492 U.S. 229, 236-43 (1989). In *H.J. Inc. v. Northwestern Telephone Co.* the Supreme Court established that besides showing a number of predicate acts, to establish a pattern a plaintiff must also show that those acts were "related and continuous." In *H.J.*, the Court described continuity as "both a closed-and-open-ended concept, referring either to a closed

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period of repeated conduct, or to past conduct that by its very nature projects into the future with a threat of repetition." *Id.* at 241. A plaintiff may demonstrate continuity over a closed period by "proving a series of related predicates over a substantial period of time." *Id.* at 242, 109. A plaintiff may also demonstrate continuity by showing that the predicate acts demonstrate "a specific threat of repetition extending indefinitely into the future, " or that the defendants' criminal activity is "a regular way of conducting defendants' ongoing legitimate business…" *Id.* **The pattern must be both backward and forward looking**. The Court also made clear, however, that "Congress was concerned in RICO with long-term criminal conduct." *Id.* Thus "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy" RICO's continuity requirement. *Id.*

Plaintiffs' Complaint lacks allegations of forward looking conduct or a threat thereof. All conduct complained of occurred in the past, foreclosing a sufficient claim of pattern.

Applying the *H.J.* continuity standard, the courts routinely have rejected RICO claims predicated on a single, alleged transaction event or venture. E.g., *Uni*quality, Inc. v. Infotronx*, 974 F.2d 918, 922 (7th Cir.1992) (dismissal for failure to state a valid RICO claim where plaintiff "alleged but one scheme that lasted at most seven to eight months," and "[t]he only predicate acts alleged were mail and wire fraud"); *Schlaifer Nance & Co. v. Estate of Andy Warhol*, 119 F.3d 91, 98 (2d Cir.1997) (upholding dismissal of RICO claim for lack of requisite continuity where fraudulent act alleged were "subparts" of "the one purportedly fraudulent act").

Plaintiffs' RICO claims are predicated on a single "pump and dump" transaction, or at best, two transactions which consist of Plaintiffs' investment in March 2005 and the "pump and dump" transaction one month later. Exhibit A, ¶¶47, 57, 78. At Paragraph 79, Plaintiffs' refer to a single "transaction at issue." Where allegations are limited to a single event or a discreet number of events occurring at most over a short amount of time, a pattern is simply not pled and the RICO count must be dismissed.

4. Plaintiffs Have Not Sufficiently Pled Damages

Plaintiffs must plead and prove facts that they were injured in their business or property by reason of the conduct constituting the RICO violation. 18 U.S.C. §1964(c). The Supreme

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Court has held that "a plaintiff's right to sue under [Section 1964(c)] require[s] a showing that the defendant's violation not only was a 'but for' cause of his injury, but was the proximate cause as well." *Anza v. Ideal Steel Supply Corp.*, 126 S.Ct. 1991, 1996 (2006). Plaintiffs have not alleged any causal nexus between any misconduct to Plaintiffs' alleged damages.

C. Plaintiffs' Claims for Violation of the 1933 and 1934 Acts are Barred by Statute of Limitations (Counts 3 and 4)

Plaintiffs' causes of action for Violation of the 1933 Act and 1934 Act are time barred. Securities fraud claims under both the 1934 Act (Section 10 and Rule 10b-5) and the 1933 Act must be brought within one year of the date on which plaintiff discovered, or in the exercise of reasonable diligence should have discovered, the existence of its claim, **but in any event, no later than three years after the offer or sale giving rise to the plaintiff's claim**. 15 U.S.C. §§77m.

The Supreme Court in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson* confirmed the three year outside limit 10B-5 violations, stating "[t]he 1-year period, by its terms, begins after discovery of the facts constituting the violation, making tolling unnecessary. The 3-year limit is a period of repose inconsistent with tolling….. [b]ecause the purpose of the 3-year limitation is clearly to serve as a cutoff, we hold that tolling principles do not apply to that period." 501 U.S. 350, 363 (1991 (quoting Bloomenthal, The Statute of Limitations and Rule 10b-5 Claims: A Study in Judicial Lassitude, 60 U.Colo.L.Rev. 235, 288 (1989) ("[T]he inclusion of the three-year period can have no significance in this context other than to impose an outside limit"); and ABA Committee on Federal Regulation of Securities, Report of the Task Force on Statute of Limitations for Implied Actions 645, 655 (1986) (advancing "the inescapable conclusion that Congress did not intend equitable tolling to apply in actions under the securities laws")).

Plaintiffs' Complaint does not specify which section of the 1933 Act has allegedly been violated; however it is alleged that Defendants violated 15 U.S.C. § 77l (1933 Act) in that they "offered to sell a security by oral communication", which suggests that the claim for relief is being made under § 77l(a)(2) also known as Section 12(2) of the 1933 Act. In an action under

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the provision of the Securities Act of 1933 concerning liability for misrepresentations or omissions in a prospectus or oral communication, the plaintiff must plead facts indicating compliance with the applicable statutes of limitation. 15 U.S.C. §77l(a)(2); *Toombs v. Leone* 777 F.2d 465, 468 (9th Cir. 1985). Claims under Section 12(2) must comply with 15 U.S.C. § 77m; see *Jackson Nat. Life Ins. Co. v. Merrill Lynch & Co., Inc.*, 32 F.3d 697, 700–702 (2d Cir. 1994); *Kahn v. Kohlberg, Kravis, Roberts & Co.*, 970 F.2d 1030, 1042 (2d Cir. 1992); *Finkel v. Stratton Corp.*, 962 F.2d 169, 172 (2d Cir. 1992); *Summer v. Land & Leisure, Inc.*, 664 F.2d 965, (5th Cir.1981) (Investor's claims under sections 77k and 77*l*(2) were absolutely barred under three-year period of limitations).

Plaintiffs do not even attempt to allege that their claims under 1933 Act or the 1934 Act comply with the applicable statute of limitations, and indeed they cannot. That is because the limitations period runs from the sale of the security, i.e., the purchase of part of the Solomon Towers investment, which occurred no later **March 3, 2005**, the date on which the Operating Agreement was executed. Plaintiffs' Complaint was filed on **April 30, 2008** and not served on KWRI until May 6, 2008. The statute of repose has thus expired and Plaintiffs' claims are time-barred as a matter of law. Accordingly, Plaintiffs' causes of action for violations of the 1934 Act and 1933 Act should be dismissed with prejudice.

D. Plaintiffs Fail to Sufficiently Plead Violation of 1934 Act (Count 4)

Beyond the absolute time bar, Plaintiffs fail to state facts sufficient to constitute a cause of action for violation under the 1934 Act. The 1934 Act reads in pertinent part as follows:

> Section 10. It shall be unlawful for any person, directly or indirectly, by the used of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange…
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations at the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. 15 U.S.C.. § 78j(b).
>
> Rule 10b-5: It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails of or any facility of any national securities exchange,
>
> (a) to employ any device, scheme or artifice to defraud,

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> (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
>
> (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security. 17 C.F.R. § 240.10b-5.

Rule 10b-5 is an anti-fraud provision and therefore plaintiffs must plead the various elements required for a violation, and also must plead fraud with particularity. 15 U.S.C. § 78j(b); 17 C.F.R. §240.10b-5. In alleging a violation of 10B and Rule 10b-5, Plaintiffs are required to plead (1) use of instrumentality of interstate commerce; (2) causation, including transaction causation and loss causation ; (3) scienter; (4) reliance; and (5) damages. *9 Causes of Action 2d 271, Cause of Action for Securities Fraud Under Section 10(b) of the 1934 Securities Exchange Act and/or Rule 10B-5*, § 4 (2008), (citations omitted). Conclusory allegations of conspiracy are insufficient. *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111 (C.A.N.Y.1982). Additionally, the Private Securities Litigation Reform Act requires that Plaintiffs plead a sufficient quantum of facts relating to the state of mind requirement relevant to the securities fraud claims alleged. *Epstein v. Itron, Inc.*, 993 F. Supp. 1314 (E.D. Wash. 1998); *In re Aetna Inc. Securities Litigation*, 34 F. Supp. 2d 935, 941-942 (E.D. Pa. 1999) (Allegations made largely on information and belief are not sufficiently specific); *Sheldon v. Vermonty*, 31 F. Supp. 2d 1287 (D. Kan. 1998) (Complaint held not to be sufficiently particular). Here, Plaintiffs' blanket allegations fall far short of the particular pleadings required.

Plaintiffs have failed to properly allege the requisite elements of a Rule 10b-5 claim. As a threshold matter, Plaintiffs have not specified the "security" alleged to be involved in the transaction at issue. The only attempt at identifying a security appears in Paragraph 49 stating "the investments sold *by the Plaintiff investors* qualify as 'securities'." That allegation is fatally uncertain. Moreover, Plaintiffs fail to allege what KWRI did "in connection" with the purchase or sale of any security. Acts outside the sale of the security, i.e., mismanagement of the investment capital by entering into allegedly over-priced land sales, is beyond the scope of the statute. See *Santa Fe Industries v. Green* 430 U.S. 462 (1977). (Held that mere instances of

corporate mismanagement are not within the Securities Exchange Act.) The only transaction Plaintiffs have linked to KWRI is the "wash sale" which is not covered by the statute. Additionally, as outlined above Plaintiffs fail to allege the use any means or instrumentality of interstate commerce in association with any potential predicate acts. Nor does the complaint allege that KWRI or any defendant utilized the national securities exchange in any alleged misconduct. Plaintiffs have not demonstrated how the facts that are alleged to have been false or fraudulent were "material" as required under Rule 10b-5. Further, the Complaint is devoid of allegations of scienter as against KWRI or any alleged franchisees thereof. Plaintiffs' conclusory statement that they "suffered damages …. in reliance on Defendants' representations" is not sufficient to satisfy the reliance requirement. Exhibit A, ¶ 120. Plaintiffs' claim for violation of the 1934 Act should be dismissed with prejudice.

E. Plaintiffs Fail to Sufficiently Plead Violation of 1933 Act (Count 5)

The 1933 Act, codified as Title 15 U.S.C. § 77*l*. "Civil liabilities arising in connection with prospectuses and communications" states, in pertinent part, as follows:

> Any person who—
>
> (2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b) of this section, to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security…

To establish a prima facie case of securities fraud in violation of Section 12(2) of the 1933 Securities Act, 15 U.S.C. §§ 771(a)(2), the plaintiff must plead and prove that: (1) the defendant offered to sell or sold plaintiff a security; (2) the offer or sale was made by the use of some means of interstate commerce or the mails; (3) the defendant made the offer or sale through a written prospectus or some oral communication related to a prospectus; (4) the offer or sale

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was made in connection with a public offering of securities; (5) the written prospectus or oral communication included an untrue statement of material fact or omitted to state a material fact; and (6) the plaintiff did not actually know of the untruth or omission at the time of the offer or sale. *11 Causes of Action 2d 1, Cause of Action for Securities Fraud under Section 12(2) of the 1933 Securities Act,* § 4 (2008) (citations omitted).

Plaintiffs' allegations in Count 5 merely restate the language of the 1933 Act without any tailoring to the facts of the instant dispute. In no way do Plaintiffs allege how KWRI "offered to sell a security by oral communications", or "made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

As stated above, Plaintiffs also fail to allege the interstate commerce requirement. Further, the 1933 Act requires the defendant to be a seller of security. Permissible defendants are limited to defendants that have directly or actively participated in the sale in question. *Pinter v. Dahl* 486 U.S. 622 (1988). As outlined above, no such facts are alleged here nor can they be. Finally, Plaintiffs have not alleged that the Solomon Towers investment amounted to a public offering of securities. Plaintiffs' claim for violation of the 1933 Act should therefore be dismissed with prejudice.

F. Plaintiffs Fail to State a Claim under Business & Professions Code section 17200 (Count 6)

The California Business & Professions Code is inapplicable as all alleged misconduct occurred in Arizona. Regardless, on its face, Count 6 fails. In federal court, §17200 claims that are grounded in fraud must satisfy the particularity requirements of Federal Rule of Civil Procedure ("FRCP") 9(b). *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1103 (9th Cir. 2003). In *Vess*, a Ritalin patient brought an action against psychiatric associations and manufacturers of prescription pharmaceuticals, alleging that defendants increased sales of particular prescription drug in violation of California's unfair business practice laws, including § 17200. *Id.* at 1101. The Ninth Circuit found that because the claimant did not provide the particulars of when, where, or how the alleged conspiracy occurred, the claimant failed to comply with FRCP 9(b)

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and the court affirmed the lower court's dismissal. *Id.* at 1100.

Here, Plaintiffs similarly present a generalized claim that lacks the necessary level of particularity. Plaintiffs' Complaint does little more than allege that that the ten defendants named in Count 6 lured Plaintiffs into transactions in order to defraud them and garner ill-gotten gains for the defendants' benefit. Exhibit A, ¶ 128. None of this information is particular enough as to the circumstances constituting the alleged fraud to "give defendants notice of the particular misconduct ... so that they can defend against the charge and not just deny that they have done anything wrong." *Vess* at 1106. Moreover in fraud actions with multiple defendants, the fraud allegations need to be pled with particularity for each defendant. *Del Campo v. Kennedy*, 491 F.Supp.2d 891, 904 (N.D. Cal. 2006). Here, Plaintiffs fail to identify how KWRI specifically violated Business and Professions Code section 17200. Without more, Count 6 as to KWRI should be dismissed with prejudice.

G. Plaintiffs' Fail to State a Cause of Action for Conspiracy (Count 11)

To state a cause of action for conspiracy the complaint must allege facts showing the formation and operation of a conspiracy, defendant's knowledge of the conspiracy and its unlawful purpose, and, as the cause of action is for damage suffered and not the mere conspiracy, the complaint must state facts which show that a civil wrong was done resulting in damage. *Orloff v. Metropolitan Trust Co.*, 17 Cal.2d 383, 388 (1941); *Unruh v. Truck Insurance Exchange* 7 Cal.3d 616, 631 (1972). As Plaintiffs' conspiracy claim is premised on a conspiracy to defraud and improperly profit from plaintiffs, the heightened pleading requirements of FRCP 9(b) are triggered. Here, Plaintiffs fail to sufficiently plead a conspiracy cause of action against KWRI, alleging only that KWRI furthered the conspiracy by acting as the agent and broker in the "wash sale" transaction. Exhibit A, ¶¶ 157, 160. No specific wrongdoing (or even knowledge thereof) is alleged as to KWRI in connection with the formation, operation or result of the alleged conspiracy. As such, Plaintiffs' claim for conspiracy is fatally insufficient.

H. Plaintiffs Have Failed to State Claims for Joint and Several Liability Pursuant to California Corporations Code Sections 25501, 25401, 25504, 25503, 25102(F) and 25110 (Counts 16 and 18)

The California Corporations Code ("Corp. Code") is improperly alleged as all allegations

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involve misconduct within Arizona. Further, the single security sale alleged occurred pursuant to the Operating Agreement at section 13.2 requires the agreement be governed by Nevada law. Exhibit A, ¶47.

Corp. Code Sections 25501, 25401, 25503, 25504, 25105(F) and 25110 comprise part of the Corporate Securities Law of 1968. Just as Plaintiffs fail to assert causes of action for violation of the1933 Act and 1934 Act against KWRI, Plaintiffs similarly fail to assert state securities fraud claims against KWRI. The 1968 Corporate Securities Law is an anti-fraud provision and thus the heightened pleadings requirement for fraud apply.

In support of the Corp. Code claims against KWRI, the Complaint asserts that nearly all defendants including KWRI profited from the inflated sale of property involved in the "wash sale", that KWRI had a pre-existing relationship with other defendants, and the commission received by defendants ZPM and ZELEZNAK in connection with the property sale support the conclusion that KWRI and ZELEZNAK aided and assisted other defendants to perpetuate fraud against the Plaintiffs. Exhibit A, ¶¶ 199, 200, 203. Again, no specifics are alleged and the Complaint falls far short of stating any actionable claim under the Corp.Code.

In asserting a cause of action under section 25401 which prohibits the sale of securities by means of false statements or omissions, Plaintiffs are required to allege strict privity between the actual seller of a security and the purchaser. *In re Diasonics Securities Litigation*, 599 F.Supp. 447 (N.D. Cal. 1984); *Employers Ins. of Wausau v. Musick, Peeler & Garrett,* 871 F.Supp.381 (S.D. Cal.1994). Failure to allege strict privity is grounds for dismissal. *Id.* Section 25501 provides grounds for relief as a result of a violation of section 25401. Plaintiffs have not and cannot assert strict privity between KWRI and Plaintiffs, therefore claims based on sections 25401 and 25501 fail. Section 25110 prohibits selling or offering to sell securities in California in an issuer transaction. Plaintiffs have not asserted that KWRI was a seller of securities. Moreover, the Complaint is devoid of allegations that KWRI is an issuer as the term is defined in section 25010. Plaintiffs have not alleged facts sufficient to state a cause of action for violation of Section 25110. It therefore follows that Section 25503, which provides for damages associated with violations of section 25110, also fails. Plaintiffs likewise cannot sustain a charge based

upon Section 25102(f) which regulates security sales exempted from section 25110 and governs the actions of sellers, purchasers and issuers of securities. The Complaint fails to allege a claim under section 25504. Section 25504 imposes liability on those who "control" persons in violation of § 25501 and § 25503, and imposes liability on those who "materially assist" violations of § 25401 "with intent to deceive or defraud." Plaintiffs' claims under section 25504 fail since the Complaint does not allege either control by or material assistance of KWRI as to any other defendants. *In re Activision Securities Litigation*, 621 F.Supp.415, 427 (N.D.Cal. 1985) (claim under § 25504 dismissed with prejudice where complaint failed to allege "control by or material assistance"). Plaintiffs' Complaint fails to assert any violations of the California Corporations Code as against KWRI. Dismissal of Counts 16 and 18 is thus appropriate.

V. CONCLUSION

KWRI respectfully requests that the Court grant this motion to dismiss, in its entirety, with prejudice.

Dated: July 30, 2008

GORDON & REES LLP

By: _____
DION N. COMINOS
MEAGEN E. LEARY
Attorneys for Defendant
KELLER WILLIAMS REALTY, INC.

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: Steve Trachsel, et al. v. Ronald Buchholz, et al.
United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

PROOF OF SERVICE

I am a citizen of the United States. My business address is 275 Battery Street, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within action.

On July 30, 2008, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

DEFENDANT KELLER WILLIAMS REALTY, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT [Fed. R. Civ. Pro. 12(b)(6)]

☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM**: with the United States District Court, Northern District, to all parties listed on the court's proof of electronic service.

☐ **BY FACSIMILE**: by transmitting by facsimile to the number(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

☐ **PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ **MAIL**: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California to the offices of the addressee(s) listed below:

☐ **OVERNIGHT DELIVERY**: I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2008 at San Francisco, California.

Sandra Sarmiento

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO. C08 2248

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT [Fed. R. Civ. Pro. 12(b)(6)]

Hearing Date: September 5, 2008
Time: 9:00 A.M.
Location: Courtroom 6
Judge: Hon. Ronald Whyte

Pursuant to Federal Rule of Evidence Code, Rule 201, Defendant KELLER WILLIAMS REALTY, INC. hereby requests that this Court, in ruling upon KELLER WILLIAMS REALTY, INC.'s Motion to Dismiss take judicial notice of the following documents:

(1) The Complaint of Plaintiffs STEVE TRACHSEL, SUN CITY TOWERS, LLC, THOMAS CIRRITO, ATOCHA LAND, LLC, MICHAEL CIRRITO and CIRRITO HOLDINGS, LLC, filed in United States District Court, Northern District, San Jose Division, Case No. C0802248, against KELLER WILLIAMS REALTY, INC. and other defendants on or about April 30, 2008. A true and correct copy of Plaintiffs' Complaint is attached hereto as Exhibit A.

Dated: July 30, 2008

GORDON & REES LLP

By: _____
DION N. COMINOS
MEAGEN E. LEARY
Attorneys for Defendant KELLER WILLIAMS REALTY, INC.

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

: Steve Trachsel, et al. v. Ronald Buchholz, et al.
United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

PROOF OF SERVICE

I am a citizen of the United States. My business address is 275 Battery Street, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within action.

On July 30, 2008, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 OF PLAINTIFFS' COMPLAINT [Fed. R. Civ. Pro. 12(b)(6)]

☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM**: with the United States District Court, Northern District, to all parties listed on the court's proof of electronic service.

☐ **BY FACSIMILE**: by transmitting by facsimile to the number(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

☐ **PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ **MAIL**: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California to the offices of the addressee(s) listed below:

☐ **OVERNIGHT DELIVERY**: I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2008 at San Francisco, California.

Sandra Sarmiento

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT "A"

TODD A. ROBERTS (SBN 129722)
JESSHILL E. LOVE (SBN 208348)
ROPERS, MAJESKI, KOHN & BENTLEY
1001 Marshall Street, Suite 300
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Attorneys for Plaintiffs
STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, an individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, an individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company

Freelaud NP 99

Filed
APR 30 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

E-FILING

ADR

Ropers Majeski Kohn & Bentley
A Professional Corporation
Redwood City

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CASE NO. C 08 02248 RS

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, an individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, an individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,

Plaintiffs,

v.

RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, an Arizona limited liability company, KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive,

Defendants.

COMPLAINT FOR:

(1) VIOLATION OF SECTION 1962(a) OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT OF 1970 (18 U.S.C. SECTIONS 1, ET SEQ.) ("RICO");
(2) VIOLATION OF RICO SECTION 1962(C);
(3) VIOLATION OF RICO SECTION 1962(D);
(4) VIOLATION OF SECURITIES EXCHANGE ACT OF 1934 SECTION 10B AND RULE 10B-5 (17 C.F.R. SECTION 240.10B-5;
(5) VIOLATION OF SECURITIES ACT OF 1933 SECTION 12(A) (15 U.S.C. SECTION 771(A));
(6) BREACH OF FIDUCIARY DUTY;
(7) BREACH OF CONTRACT;
(8) NEGLIGENT MISREPRESENTATION;
(9) INTENTIONAL MISREPRESENTATION;
(10) CONSPIRACY;
(11) FRAUD;
(12) CONSTRUCTIVE FRAUD;
(13) ALTER EGO;

(14) VIOLATION OF SECTION 17200, ET SEQ. OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE;
(15) RESCISSION OF SECURITY TRANSACTION PURSUANT TO CALIFORNIA CORP. CODE SECTIONS 25501 AND 25401;
(16) DAMAGES FOR SECURITIES TRANSACTION PURSUANT TO CALIFORNIA CORP. CODE SECTIONS 25501, 25401, 25504;
(17) RESCISSION OF SALE OF SECURITIES NOT QUALIFIED FOR SALE AND RESTITUTION PURSUANT TO CALIFORNIA CORP. CODE SECTIONS 25503, 25102, 25110;
(18) DAMAGES FOR SALE OF SECURITIES NOT QUALIFIED FOR SALE PURSUANT TO CALIFORNIA CORP. CODE SECTIONS 25503, 25102, 25110

JURY TRIAL DEMANDED

Ropers Majeski Kohn & Bentley
A Professional Corporation
Redwood City

PLAINTIFFS STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, an individual, ATOCHA LAND, LLC, a Delaware limited liability company, CIRRITO HOLDINGS, LLC, a Delaware limited liability company, and MICHAEL CIRRITO, an individual, ("Plaintiffs"), by and through their attorneys, submit their Complaint against DEFENDANTS RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, an Arizona limited liability company, KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive ("Defendants") as follows.

I.

INTRODUCTION AND OVERVIEW OF THE ACTION

1. This is an unlimited civil action brought under Sections 1962(a), 1962(c), and

1962(d) of the Racketeer Influenced & Corrupt Organizations Act of 1970 (18 U.S.C. §§1961 et seq.) ("RICO"); Section 10b and Rule 10b-5 of the Securities Exchange Act of 1934 (17 C.F.R. § 240.10b-5) ("Rule 10b-5"); Section 12(a) of the Securities Act of 1933 (15 U.S.C. § 771(a)) ("Section 12(a)"); Section 17200 of the California Business & Professions Code; Breach of Fiduciary Duty; Breach of Contract; Negligent Misrepresentation; Intentional Misrepresentation; Conspiracy; Alter Ego; and California Corporations Code §§ 25401, 25501, 25503, 25110, and 25130.

2. On information and belief, Plaintiffs allege that Defendants created a real estate "Ponzi scheme" to defraud Plaintiff investors of millions of dollars of invested securities. Defendants misrepresented, among other things, that they were paying fair market value for the land to be purchased by Defendants with Plaintiffs' investment capital and that Plaintiffs would receive a fair return on their investments. Plaintiffs were lured into these transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered a fraudulent Enterprise to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit.

3. Plaintiffs allege, on information belief, that Defendants' fraudulent Enterprise or "Ponzi scheme" involved the "operators," SOLOMON CAPITAL, RONALD BUCHHOLZ, RDB DEVELOPMENT, and CHARICE FISCHER, who raised the investment capital, the "speculators," DONALD ZELEZNAK, Z-LOFT, JONATHON VENTO, and GRACE CAPITAL, who purchased the land in advance in preparation for later sale to the investors at a highly inflated price, and the "agent and broker" DONALD ZELEZNAK, ZELEZNAK PROPERTY MANAGEMENT, and KELLER WILLIAMS REALTY, INC., who facilitated the transactions and received, in some instances, 20% (twenty percent) commission rates. The proceeds from this fraudulent Enterprise were then used by Defendants to perpetrate a fraud upon other investors. By this complaint, Plaintiffs seek rescission of the unqualified securities, damages, and injunctive relief to enjoin Defendants from continuing to perpetrate the fraudulent Enterprise or "Ponzi scheme" upon other putative investors or transferring any assets acquired therefrom.

II.

JURISDICTION AND VENUE

4. This is an action for damages and a permanent injunction arising out of Defendants' violations of Sections 1962(a), 1962(c), and 1962(d) of the Racketeer Influenced and Corrupt Organizations Act of 1970 (18 U.S.C §§ 1961, et seq. ("RICO"); Section 10b and Rule 10b-5 of the Securities Exchange Act of 1934 (17 C.F.R. § 240.10b-5) ("Rule 10b-5"); Section 12(a) of the Securities Act of 1933 (15 U.S.C. § 771(a)) ("Section 12(a)"); Section 17200 of the California Business & Professions Code; Breach of Fiduciary Duty; Breach of Contract; Negligent Misrepresentation; Intentional Misrepresentation; Conspiracy; Fraud, Constructive Fraud; Alter Ego; and California Corporations Code §§ 25401, 25501, 25503, 25110, and 25130.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, federal question jurisdiction, based on the RICO, Rule 10b-5, and Section 12(a) claims in this action. This Court has supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367 because the remaining state law claims are so related to the RICO, Rule 10b-5, and Section 12(a) claims that they form a part of the same case or controversy and fall within this Court's supplemental jurisdiction.

6. In addition, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2), diversity of citizenship jurisdiction, because all Plaintiffs are citizens of different states than all Defendants, and because the amount in controversy exceeds $75,000.00.

7. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1965(a) because the Defendants transact affairs in this District; pursuant to 28 U.S.C. § 1965(b) because the ends of justice require that the parties residing in any other district be brought before this Court; pursuant to 28 U.S.C. §1291(b) because a substantial part of the events or omissions giving rise to this action occurred in this District; and/or pursuant to 28 U.S.C. § 1391(b) because one or more of the Defendants is subject to personal jurisdiction in this District.

8. The Court has jurisdiction over Defendants RONALD BUCHHOLZ and CHARICE FISCHER because RONALD BUCHHOLZ and CHARICE FISCHER own property

in the State of California. Several of the companies they manage, including RDB DEVELOPMENT and SOLOMON CAPITAL, list as their principal address 20 Great Oaks Blvd., Suite 230, San Jose, California.

9. This Court has jurisdiction over Defendant RDB DEVELOPMENT, LLC ("RDB DEVELOPMENT") because it maintains an office or place of business in the State of California, it regularly conducts business in the State of California, and it purposefully directed the activities complained of herein toward residents of California and otherwise established contacts with California in participating in and otherwise engaging in the Enterprise as described herein.

10. This Court has jurisdiction over Defendant SOLOMON CAPITAL, LLC ("SOLOMON CAPITAL") because it maintains an office or place of business in the State of California, it regularly conducts business in the State of California, and it purposefully directed the activities complained of herein toward residents of California and otherwise established contacts with California in participating in and otherwise engaging in the Enterprise as described herein.

11. This Court has jurisdiction over Defendants DONALD ZELEZNAK ("ZELEZNAK") and Z-LOFT, LLC ("Z-LOFT") they regularly conduct business in the State of California, because ZELEZNAK owns property in the State of California, and because both DONALD ZELEZNAK and Z-LOFT purposefully directed the activities complained of herein toward residents of California and otherwise established contacts with California in participating in and otherwise engaging in the Enterprise as described herein.

12. The Court has jurisdiction over Defendants JONATHON VENTO ("VENTO") and GRACE CAPITAL, LLC dba GRACE COMMUNITIES ("GRACE CAPITAL") because they regularly conduct business in the State of California, because they own property in the State of California, and because they purposefully directed the activities complained of herein toward residents of California and otherwise established contacts with California in participating in and otherwise engaging in the Enterprise as described herein.

13. This Court has jurisdiction over Defendants ZELEZNAK PROPERTY MANAGEMENT ("ZPM") and KELLER WILLIAMS REALTY ("KELLER WILLIAMS"),

because they regularly conduct business in the State of California, because they own or lease property in the State of California, and purposefully directed the activities complained of herein toward residents of California and otherwise established contacts with California in participating in and otherwise engaging in the Enterprise as described herein, and because KELLER WILLIAMS maintains multiple places of business in the State of California, is qualified to conduct business in California, and regularly conducts business in the State of California.

III.

PARTIES

14. Plaintiffs STEVE TRACHSEL is, and at all times relevant was, a citizen of California. TRACHSEL is, and at all times relevant was, a resident of Santa Clara County. TRACHSEL is an investor in the Solomon Towers project and/or a member of the Solomon Towers limited liability company. TRACHSEL purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

15. Plaintiffs SUN CITY TOWERS, LLC, is, and at all times relevant was, a California limited liability company, with its principal place of business in California. Said corporation was an investor in the Solomon Towers project and/or a member of the Solomon Towers limited liability company. Said corporation purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

16. Plaintiff THOMAS CIRRITO is, and at all times relevant was, a citizen of Virginia. CIRRITO is, and at all times relevant was, a resident of Fairfax County, Virginia. CIRRITO was an investor in the Solomon Towers project and/or a member of the Solomon Towers limited liability company. CIRRITO purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

17. Plaintiff ATOCHA LAND, LLC, is, and at all times relevant was, a Delaware limited liability company, with its principal place of business in Virginia. Said corporation was an investor in the Solomon Towers project and/or a member of the Solomon Towers limited liability company. Said corporation purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

18. Plaintiff MICHAEL CIRRITO is, and at all times relevant was, a citizen of California. CIRRITO is, and at all times relevant was, a resident of Marin County, California. CIRRITO was an investor in the Solomon Towers project and/or a member of the Solomon Towers limited liability company. CIRRITO purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

19. Plaintiff CIRRITO HOLDINGS, LLC, is, and at all times relevant was, a Delaware limited liability company, with its principal place of business in California. Said corporation was an investor in the Solomon Towers project and/or a member in the Solomon Towers limited liability corporation. Said corporation purchased the unqualified securities from SOLOMON CAPITAL based on the misrepresentations discussed herein.

20. Defendant SOLOMON CAPITAL is a Nevada limited liability company and maintains an office at 20 Great Oaks Blvd., Suite 230, San Jose, California. SOLOMON CAPITAL, in connection with Defendants RONALD BUCHHOLZ and CHARICE FISCHER, was the issuer of the unqualified securities for investment procured by the Plaintiffs herein.

21. On information and belief, Defendant RONALD BUCHHOLZ is, and at all times relevant was, a citizen of Nevada. Defendant BUCHHOLZ, at all times relevant was, a resident of Washoe County, Nevada.

22. On information and belief, Defendant CHARICE FISCHER is, and at all times relevant was, a citizen of Nevada. Defendant FISCHER, at all times relevant was, a resident of Washoe County, Nevada.

23. On information and belief, Defendant JONATHON VENTO, is, and at all times relevant was, a citizen of Arizona. Defendant VENTO, at all times relevant was, a resident of Maricopa County, Arizona.

24. On information and belief, Defendant DONALD ZELEZNAK, is, and at all times relevant was, a citizen of the State of Arizona and a resident of Washoe County, Nevada.

25. Defendant Z-LOFT, LLC is an Arizona limited liability company, with its principal place of business in Maricopa County, Arizona. Z-LOFT, in connection with Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER,

ZELEZNAK, ZPM, VENTO, and GRACE CAPITAL materially assisted Defendants to perpetrate the fraudulent Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for an over-inflated and above fair market value price.

26. Defendant GRACE CAPITAL, LLC dba GRACE COMMUNITIES is an Arizona limited liability company, with its principal place of business in Maricopa County, Arizona. GRACE CAPITAL, in connection with Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, ZELEZNAK, Z-LOFT, ZPM, and VENTO, materially assisted Defendants to perpetrate the fraudulent Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for a grossly over-inflated and above fair market value price.

27. Defendant ZELEZNAK PROPERTY MANAGEMENT, LLC, is an Arizona limited liability company, with its principal place of business at 10101 N. 92nd St., # 101, Scottsdale, Maricopa County, Arizona. ZPM, in connection with Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, ZELEZNAK, Z-LOFT, VENTO, and GRACE CAPITAL, was the responsible broker for the agent ZELEZNAK and materially assisted Defendants to perpetrate the fraudulent Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for an over-inflated and above fair market value price.

28. Defendants RDB DEVELOPMENT, LLC, is a limited liability company, with its principal place of business at 19 Avenida Sorrento, Henderson, Clark County, Nevada. RDB DEVELOPMENT, in connection with Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, ZELEZNAK, Z-LOFT, ZPM, VENTO, and GRACE CAPITAL, materially assisted Defendants to perpetrate the fraudulent Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for an over-inflated and above fair market value price. Based on information and belief, Defendants BUCHHOLZ and FISCHER diverted undisclosed funds from the Solomon Towers project to RDB DEVELOPMENT for their own personal use to the detriment of Plaintiffs herein.

29. Defendant KELLER WILLIAMS REALTY, INC., is a Texas corporation, with its

principal place of business in Austin, Travis County, Texas. KELLER WILLIAMS is vicariously liable for the actions of its franchise, ZPM, which materially assisted Defendants to perpetrate the fraudulent Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for an over-inflated and above fair market value price. Based on information and belief, Defendants BUCHHOLZ and FISCHER diverted undisclosed funds from the Solomon Towers project to RDB DEVELOPMENT for their own personal use to the detriment of Plaintiffs herein.

30. Plaintiffs do not know the true names of Defendants DOES 1 through 50 and therefore sue them by those fictitious names. Plaintiffs are informed and believe and on that basis allege, that at all times mentioned in this complaint, DOES 1 through 50 were the agents and employees of their co-Defendants, and in performing the acts and omissions alleged in this complaint were acting within the course and scope of that agency and employment.

IV.

FACTUAL ALLEGATIONS

A. Defendants' Alleged Real Estate Investment Company

31. Defendants BUCHHOLZ and FISCHER are members of the Family Community Church (hereinafter "Church") located at 478 Piercy Road, San Jose, California. William Buchholz, who is Defendants BUCHHOLZ and FISCHER's father, is the Senior Pastor for the Church.

32. According to the SOLOMON CAPITAL website located at http://www.solomoncap.com, BUCHHOLZ is the President of Defendant SOLOMON CAPITAL. Defendant FISCHER is both a principal and the Chief Financial Officer of Defendant SOLOMON CAPITAL. Based on information and belief, BUCHHOLZ, FISCHER, and SOLOMON CAPITAL market and advertise themselves as experts in the context of real estate investing.

33. Plaintiffs allege on information and belief that SOLOMON CAPITAL is an investment group associated with RDB DEVELOPMENT and Equity Enterprises, Inc. Defendants BUCHHOLZ and FISCHER founded Equity Enterprises, Inc. as the predecessor to

SOLOMON CAPITAL. BUCHHOLZ is the President of both entities. SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, acted as the "issuers" of the unqualified securities to the Plaintiff investors.

34. Defendants BUCHHOLZ, FISCHER and SOLOMON CAPTITAL derive their income through investment activities on behalf of themselves and others, some of who they met through their relationship with the Church. Based on information and belief, BUCHHOLZ, FISCHER and SOLOMON CAPTITAL market and advertise themselves as experts in the context of real estate investing.

35. Based on information and belief, Defendants BUCHHOLZ' father, William Buchholz, repeatedly recommended that the parishioners of his Church invest with his son and daughter, Defendants BUCHHOLZ and FISCHER, and their "investment company," SOLOMON CAPITAL. At times, Pastor Buchholz made statements directly to his congregation from the "pulpit" encouraging them to invest with his son and daughter.

36. Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL secured investments from Plaintiffs in numerous different investment vehicles, including raw land developments and acquisition and development projects. The investor funds were placed in different positions within the project inclusive of debt and equity positions.

37. In each case for each alleged investment, Defendants BUCHHOLZ, FISCHER and SOLOMON CAPITAL received a "developer fee" of the amount raised and invested. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL were also to receive a percentage of any profit earned from the investment projects.

38. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL also took undisclosed "kick backs" from third parties in connection with the purchase, sale, and alleged development of SOLOMON CAPITAL investment projects to the detriment of the Plaintiff investors.

39. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL have taken approximately $330,000 in "developer fees" to date from the Solomon Towers project to the detriment of the Plaintiff investors.

40. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL moved or transferred the investments of the Plaintiff investors to additional projects without their consent and encumbered the projects with additional debt without the consent of the Plaintiff investors.

41. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL have improperly commingled the investor funds with their own and with those of the other investors.

42. Based on information and belief, RDB DEVELOPMENT materially assisted Defendants to perpetrate the fraud and Enterprise discussed herein upon the Plaintiffs for the purchase and sale transaction for the Property for an over-inflated and above fair market value price.

43. Based on information and belief, Defendants BUCHHOLZ and FISCHER diverted undisclosed funds from the Solomon Towers project to RDB DEVELOPMENT for their own personal use to the detriment of Plaintiffs herein.

B. The Solomon Towers Project

44. In or around February of 2005, SOLOMON CAPITAL presented the Solomon Towers, LLC high rise condominium investment ("Solomon Towers project") opportunity to Plaintiffs. The presentation consisted of an "oral" presentation with a Power Point presentation. A true and correct copy of the Power Point presentation disseminated to the Plaintiff investors is attached hereto as Exhibit "A" to the Complaint. Pro Forma financials were also distributed to the Plaintiff investors. A true and correct copy of the Pro Forma financials distributed to the Plaintiff investors is attached hereto as Exhibit "B" to the Complaint.

45. Notwithstanding the Power Point presentation and the Pro Forma financials described herein, no other disclosure documentation was disseminated to the Plaintiff investors regarding the Solomon Towers project. There was no Private Placement Memorandum or "PPM" provided to the Plaintiff investors at the presentation or anytime thereafter setting forth the potential risks inherently involved in the project and the potential future loss of the entire investment.

46. Defendant ZELEZNAK was present at the February 2005 meeting with potential investors, was introduced during a subsequent meeting on June 8, 2005 as a "key player," and spoke at length during that later meeting regarding the benefits of real estate investment in the Arizona market. ZELEZNAK also acted as the buyer's broker for the purchase of the Solomon Towers property.

47. In March of 2005, the investors executed an Operating Agreement with Solomon Towers, LLC. The Operating Agreement includes 18 initial members who contributed a total of $4,169,400.00 [1]. Further, the Operating Agreement includes 13 loans made to Solomon Towers, LLC, totaling $840,600.00. Accordingly, the total payments to Solomon Towers, LLC by Plaintiffs and other investors total $5,010,000.00. A true and correct copy of the Operating Agreement is attached hereto as Exhibit "C" to the Complaint.

48. As part of this Operating Agreement, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, as managers of Solomon Towers, LLC, agreed, among other things, to use company funds only to further the purposes of the company, not to commingle the funds with their own or others' funds, not to knowingly perform any act that contravened the Operating Agreement or was inconsistent with the purposes of the company, and to keep accurate books and records for the company.

C. The Sale of Unqualified Securities

49. The investments sold by the Plaintiff investors qualify as "securities" pursuant to California Corporations Code § 25019. Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL qualify as the "broker-dealers" and "issuers" of the securities pursuant to California Corporations Code §§ 25004 and 25010.

50. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL have neither qualified for nor exempted themselves from qualification of the "securities" in accordance with California Corporations Code § 25110.

51. The potential investors approached by Defendants BUCHHOLZ and FISCHER were unsophisticated real estate investors and relied upon the representations of Defendants

[1] Sun City Towers, LLC contributed 4.8% and Atocha Land, LLC contributed 15.9%.

BUCHHOLZ and FISCHER. The risks associated with the investments were not explained to the Plaintiff investors, who relied upon Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL in making their investment decisions. The reliance of the Plaintiff investors upon the representations, information and promises by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL was justified based upon Defendants' fiduciary role and apparent experience.

52. The Plaintiff investors had no say or control over their funds, the nature or types of positions in which they were placed, the expenditure of the funds for development projects, or the administration of the funds.

53. The Plaintiff investors had no say or control over the additional investors or members that were chosen by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL as their ostensible "partners" in the Solomon Towers project.

54. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, as the principals of the company, acted as the managing members for the Solomon Towers project. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, therefore, held fiduciary duty obligations to the Plaintiff investors that were breached pursuant to the fraudulent Enterprise and acts set forth herein.

D. Defendants' "Pump and Dump" Purchase of the Land Above Market Price to the Detriment of the Plaintiff Investors

55. Soho Lofts, LLC was owned and managed by ZELEZNAK. On July 25, 2002, Soho Lofts purchased property located at 625-643 N. 2nd Avenue, Phoenix, AZ (hereinafter referred to as "the Property") from Core Builders, Inc. for $392,000.00. According to tax records, the square footage of the Property is 28,000 square feet. Thus, the cost for this transaction was $14.00 per square foot.

56. On August 17, 2004, Soho Lofts, LLC changed its name to Z-LOFT, LLC.

57. On April 11, 2005, Z-LOFT, in connection with GRACE CAPITAL, sold the Property to SOLOMON TOWERS, LLC for $5,004,929.00. The cost per square foot for this transaction was approximately $178.75 per square foot. Based on information and belief, the

actual market rate for the land from February to March of 2005 was approximately $33.19 per square foot.

58. Based on information and belief, the Plaintiff investors allege that Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL shared in the distribution of ill-gotten gains from the "pump and dump" transaction to the detriment of the Plaintiff investors.

59. As the President and Chief Financial Officers of SOLOMON CAPITAL and the managing partners of Solomon Towers, LLC, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL held fiduciary duties to the Plaintiff investors that were breached in connection with the "pump and dump" transaction to the detriment of the Plaintiff investors. Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL knew, or should have known, that the price paid for the land was more than five times its fair market value and nearly thirteen times the cost to Z-LOFT and ZELEZNAK, that the inflated purchase price benefited Defendants personally to the detriment of Plaintiff investors, and constituted a breach of Defendants' fiduciary duties to the Plaintiff investors.

60. Based on information and belief, Plaintiffs allege that Defendants ZELEZNAK, Z-LOFT, ZPM, VENTO, and GRACE CAPITAL all profited on the over-inflated and above market "pump and dump" sale to the detriment of the Plaintiff investors. Defendants ZPM and ZELEZNAK received a commission on the sale of the Property of $1,000,000.00 (one million dollars.) This commission rate is equivalent to a 20% (twenty-percent) commission, which far exceeds the prevailing market rate of 5% to 6% for sales transactions involving raw land. A true and correct copy of the HUD-1 Closing Statement for the purchase and sale transaction that sets forth the payment of the commission of $1,000,000.00 (one million dollars) to Defendants ZELEZNAK and ZPM is attached hereto as Exhibit "D".

61. The implications of this commission for the sale of the Property supports the conclusion that Defendants ZPM and ZELEZNAK knowing and materially aided and assisted Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, Z-LOFT, ZPM, VENTO, and GRACE CAPITAL to perpetrate the fraudulent Enterprise as discussed herein against the Plaintiffs. The implications of the over-inflated and

above market commission for the sale of the Property from Defendants Z-LOFT, GRACE CAPITAL, VENTO and ZELEZNAK to the Plaintiffs supports the conclusion that Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, Z-LOFT, ZPM, VENTO, and GRACE CAPITAL knowingly and materially aided and assisted in an Enterprise to perpetrate the fraud as discussed herein against the Plaintiffs.

62. Based on information and belief, Defendants VENTO and GRACE CAPITAL received a commission, "kick back", or distribution of the ill gotten proceeds from the "pump and dump" transaction described herein and participated in the fraudulent Enterprise described herein upon the Plaintiff investors to their benefit and to the detriment of the Plaintiff investors.

63. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL also profited from the over-inflated and above market "pump and dump" sale to the detriment of the investors. Moreover, based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL have received "developer fees" in excess of $330,000 from the amount raised and invested. Based on information and belief, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL were also to receive a percentage of any profit earned from the investment projects.

64. Based on information and belief, Defendants BUCHHOLZ, FISCHER and SOLOMON CAPITAL also took undisclosed "kick backs" from third-parties in connection with the purchase, sale, and alleged proposed development of the Solomon Tower investment project to the detriment of the Plaintiff investors.

65. Based on information and belief, on February, 1 2006, Solomon Towers, LLC deeded the Property to Z-LOFT, the original seller, for de minimus consideration. Further, on September 18, 2006, Solomon Towers, LLC purchased the Property from Z-LOFT for $10.00. The aforementioned acts were undertaken as further attempts to disguise the fraudulent nature of the Enterprise upon the Plaintiff investors.

E. Misrepresentations and Material Omissions Regarding the Sale of the Solomon Tower Securities at Issue By Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL

66. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection

with the presentation to the Plaintiff investors regarding the Solomon Towers project (see Exhibit "A"), failed to disclose the pre-existing relationship between Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL with Defendants ZELEZNAK and VENTO and their partnership entities Z-LOFT, ZPM, and GRACE CAPITAL. The failure to disclose this fact constitutes a material omission since, among other reasons, the Property was purchased by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, using the Plaintiff investors' funds, from Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL, for a vastly over-inflated price.

67. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose that the Property was not worth the amount that would be paid. Further, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER failed to disclose that the comparable square foot value for land in the area at the time of purchase was approximately $33.19 per square foot, nowhere near the $178.75 per square foot amount paid by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL to Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL.

68. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the an accurate purchase price per square foot of the Property. According to the documentation presented to the investors, the purchase price per square foot for the Property was $153.05 per square foot when, in fact, the purchase price paid was $178.75 per square foot paid by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL to Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL.

69. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the fact that the real estate agent and broker for the transaction, ZELEZNAK and ZPM, was also the seller of the Property. Further, Defendants SOLOMON

CAPITAL, BUCHHOLZ, and FISCHER did not disclose until just before closing the fact that ZELEZNAK received a $1,000,000.00 commission for his role as the seller's agent for the transaction. (See Exhibit "D") This commission rate is equivalent to a 20% (twenty-percent) commission, which far exceeds the prevailing market rate of 5% to 6% for sales transactions involving raw land. Based on information and belief, ZELEZNAK and ZPM acted in a dual agency role in connection with the purchase and sale of the Property. Defendants ZELEZNAK and ZPM's dual agency was similarly not disclosed by Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER to the Plaintiff investors.

70. Based on information and belief, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose that ZELEZNAK and VENTO, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL, would receive a distribution of the purchase and sale proceeds from the transaction. Defendants further failed to disclose: (1) the pre-existing relationship between Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL and Defendants VENTO and ZELEZNAK; or (2) that VENTO and ZELEZNAK were involved in the GRACE CAPITAL partnership with the real estate agent for the transaction, ZELEZNAK, who was also the seller of the Property. Based on information and belief, Defendant VENTO and ZELEZNAK received a distribution from the purchase and sale proceeds from the transaction at issue for the Property. Defendants ZELEZNAK and VENTO, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL materially aided SOLOMON CAPITAL, BUCHHOLZ, and FISCHER within the meaning of California Corporations Code Sections 25503, 25102(f), and 25110 and are, therefore, jointly and severally liable to Plaintiffs pursuant to California Corporations Code Sections 25501, 25401, and 25504.

71. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose that the Plaintiff investors may be subject to supplemental capital obligations in the future. To the contrary, Plaintiff investors were told that they had no obligation beyond their initial investment. The Pro Forma Finance & Investment Analysis: 10 Stories

(Exhibit "A") states: "Required Equity: $5,000,000." The Plaintiff investors were informed by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, both verbally and in writing, that no further capital contribution would be "required" of them. At the time that Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL solicited and received the investments, however, Defendants were aware of the fact that the project was severely undercapitalized, in part due to the diversion of Plaintiffs' investments to the purchase of the raw land at a grossly inflated price that far exceeded its fair market value. Defendants failed to disclose that information to Plaintiff investors.

72. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the actual size of the Property to the Plaintiff investors by a material amount. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER represented that the parcel size for the Property was ¾ of an acre, approximately 32,670 square feet. The tax records for the Property, however, clearly show that the Property is approximately 28,000 square feet, over 4,000 square feet smaller than SOLOMON CAPITAL represented to the Plaintiff investors.

73. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), materially misrepresented the actual return or "profit" to the Plaintiff investors. The Pro Forma Finance & Investment Analysis: 10 Stories (Exhibit "A") states: "Investor Profit: 50%." To date the Plaintiff investors have received no return on investment from the Solomon Towers project. To the contrary, the Plaintiff investors have been requested to make further capital call contributions to the project. Further, according to pro forma financials disseminated by Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER on Friday, February 29, 2008, the Solomon Towers project is in severe financial distress and overleveraged in amount in excess of $2,400,000. (Exhibit "E")

74. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the zoning for the project. The Sales Pro Forma document for the Power

Point presentation states that the project would be for 15 stories. Based on information and belief, however, the land, at the time of purchase and sale, was only zoned for 10 stories.

75. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the timeline for completion of the project and return of investment capital and profits to the Plaintiff investors. According to the presentation to the investors in February of 2005, the project would require: (1) 60 days to acquire the land, (2) 9-12 months to explore project definition, and (3) 2 years for build out and marketing. Thus, according to Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER's representations to the Plaintiff investors, the Solomon Towers project would be complete and in the sales phase within 3 years and 2 months, or April of 2008. To date, however, construction has not begun on the project and the project is in severe financial distress due to the fraudulent activities and incompetence of Defendants.

76. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER misrepresented to the Plaintiff investors that they were buying into a viable investment opportunity for a high rise condominium project. The reality, however, was that Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, Z-LOFT, ZPM, VENTO, and GRACE CAPITAL, through the investment scheme and Enterprise, had already extracted any potential profits from the potential investment for themselves through the fraudulent Enterprise. The plaintiff investors were then left with a project that was not viable since it was "under water," meaning that the debt on the project so far outweighed its value that the development was not financially viable.

F. Defendants' Enterprise and Distribution of Ill-Gotten Gains

77. Based on information and belief, Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, Z-LOFT, GRACE CAPITAL, ZELEZNAK and VENTO operated an investment Enterprise designed to take unfair advantage of Plaintiff investors and other investors in additional investment scams.

78. Based on information and belief, the Enterprise was designed in a form or fashion

in which Defendants Z-LOFT, GRACE CAPITAL, ZELEZNAK, and VENTO would purchase property in less desirable areas for market rate, and then sell the property to SOLOMON CAPITAL and its Plaintiff investor groups for significantly more than the market rate. Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, and VENTO would then benefit from the distribution of ill gotten gains to the detriment of the Plaintiff investors. Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, and VENTO would profit on the "pump and dump" Enterprise through a "wash sale" of the land to the unsophisticated Plaintiff investors and distribute the ill-gotten gains amongst the Defendants.

79. Based on information and belief, Defendants KELLER WILLIAMS and ZELEZNAK acted as the responsible broker and agent for the transaction at issue for the Solomon Towers, LLC investment project as well as other fraudulent investment Enterprises orchestrated by Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, Z-LOFT, GRACE CAPITAL, ZELEZNAK and VENTO upon unknowing and unsophisticated Plaintiff investors.

80. Based on information and belief, Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL misrepresented to the Plaintiff investors that they were buying into a viable investment opportunity for a high rise condominium project. The reality, however, was the that Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, Z-LOFT, GRACE CAPITAL, ZELEZNAK and VENTO through the investment scheme and Enterprise, had already extracted any potential profits from the potential investment for themselves through the fraudulent Enterprise. The plaintiff investors were then left with a project that was not viable since it was "under water," meaning that the debt on the project so far outweighed the value that development prospects were no longer possible absent an extreme pro forma or forecasted loss.

G. Police Raid the Office of SOLOMON CAPITAL to Investigate Allegations of Defendants' "Pump and Dump" Sales and Fraudulent Investment Schemes

81. Based on information and belief, in or around July of 2007, the offices of

Defendants SOLOMON CAPITAL, BUCHHOLZ and FISCHER were raided by both state and federal authorities in connection with a warrant to investigate allegations of defendants' "pump and dump" sales and fraudulent investment schemes. The Plaintiffs' first notice of the alleged fraudulent activities being conducted by the Defendants was received subsequent to the raid upon SOLOMON CAPITAL by the state and federal authorities. The Plaintiffs received a letter from the Office of the District Attorney postdated July 31, 2007 requesting their voluntary responses to a questionnaire about SOLOMON CAPITAL, and Equity Enterprises, Inc. The letter from Deputy District Attorney Michael Fitzsimmons is dated July 25, 2007. The receipt of the District Attorney's correspondence was Plaintiffs' first notice that the aforementioned businesses were under investigation for potential allegations of fraud.

82. Based on information and belief, Defendants activities are presently under investigation by the state and federal authorities in connection with Defendants' activities and the Enterprise as defined and set forth herein. Based on information and belief, the pending indictment has not been dismissed.

83. Based on information and belief, the state and federal authorities seized the contents of the offices of Defendants SOLOMON CAPITAL, BUCHHOLZ and FISCHER in connection with the state and federal investigation and the pending indictment.

V.

COUNT 1: VIOLATION OF SECTION 1962(A) OF THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATION ACT OF 1970 ("RICO")

(Against Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, Z-LOFT, ZPM, VENTO, GRACE CAPITAL, and DOES 1-50)

84. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 83, inclusive, as though set forth fully herein.

85. Defendants, and each of them, are RICO "persons," as that term is defined in 18 U.S.C. § 1961(3).

86. For purposes of this claim for relief, the RICO "Enterprise" is an ongoing and continuing association-in-fact formed for the common shared purpose of defrauding investors of

real estate investment funds, including but not limited to, Plaintiffs, without the consent or approval of the investors, and collecting profits from these illegal activities. Plaintiffs are informed and believe that Defendants, and each of them, participated in the management or direction of the Enterprise.

87. Based on information and belief, the specific internal corporate mechanisms and operations by which Defendants carried out their fraudulent scheme, and the specific activities engaged in by Defendants in furtherance of their fraudulent scheme, are within the exclusive knowledge of Defendants, and DOES 1-50. To date, given the far-reaching, complex, and clandestine nature of Defendants' fraudulent scheme, Plaintiffs have only been able to gather limited information regarding some aspects of the fraudulent scheme.

88. Based on information and belief, and at all relevant times, Defendants, and each of them, violated RICO when they conducted or participated in affairs of the Enterprise through a pattern of racketeering activity, by fraudulently or negligently disclosing or failing to disclose material facts to investors and engaging in fraudulent land sales and transfers that involve use of investor funds for purchase of land at highly inflated and above-market prices. Plaintiffs received their own ill-gotten gains via the use of the U.S. mail and wires from the sale of the land described herein for over-inflated values.

89. Defendants and DOES 1-50, have joined together with a common, shared purpose, or community of interest, with an ongoing organization structure continuing throughout the period of the time alleged herein, to collectively form an Enterprise, within the meaning of 18 U.S.C. § 1961(4).

90. Defendants and DOES 1-50 have participated in the affairs of the Enterprise, and are all involved in the conduct of the Enterprise.

91. Defendants and DOES 1-50 have used or caused to be used the mails and wires and intrastate commerce in furtherance of their scheme and artifice to defraud purported investors, including but not limited to Plaintiffs, by inducing them to place investments with that were then used to purchase land at over-inflated and above-market values to allow for the distribution of ill-gotten gains to Defendants herein. The acts described herein were without the

Plaintiff investors' consent and were derived by means of false and fraudulent pretenses, or representations, in violation of 18 U.S.C. §§ 1341 and 1343. Defendants herein used negotiable instruments, mails, and wires in furtherance of their fraudulent scheme.

92. Defendants and DOES 1-50 were fully aware, or should have been aware, that the investors had not consented to the distribution of ill-gotten gains to Defendants herein arising from the purchase and sale of land and property for over-inflated and above-market rates for the benefit of Defendants herein. Defendants herein continue their participation in the fraudulent scheme with this knowledge.

93. The acts of Defendants and DOES 1-50 in defrauding Plaintiffs have been ongoing since at least February 2005 and continue to date.

94. Defendants and DOES 1-50 defrauded Plaintiffs by luring them to place investments in various real estate companies owned or operated by the Defendants, and used these investments to purchase land and/or property for over-inflated and above-market values while Defendants simultaneously defrauded Plaintiffs by benefiting from the over-inflated and above-market land sales. The specifics of the transactions at issue were never disclosed to Plaintiffs, and Plaintiffs had no knowledge of the same.

95. On information and belief, there is evidence establishing a sophisticated pattern of fraud perpetrated by the Defendants in which the Defendants herein baited Plaintiffs (and on information and belief, over 250 additional potential investors) with the prospect of high investment returns, and then failed to deliver the promised returns, instead using fraudulent land transfers to derive ill-gotten gains from Plaintiffs' investments without their authority, knowledge, or consent, thereby leaving Plaintiffs and other purported investors without the promised returns or land values to cover their investments.

96. The fraud perpetrated by Defendants and DOES 1-50 utilizing the tactics described herein, in connection with their multiple dealings with Plaintiffs over the span of three to four years and their active concealment of their activities was furthered by Defendants' and DOES 1-50's use of the mails and wires, constitutes a pattern of racketeering activity within the meaning of U.S.C. § 1961(5).

97. The Enterprise alleged herein was, at all times mentioned herein, engaged in activities which affect intrastate commerce.

98. Defendants and DOES 1-50 have received income derived from their participation in the pattern of racketeering activities alleged herein. That income consisted of the activities derived by the Defendants over-inflated and above-market property transfers wherein Defendants would defraud the Plaintiff investors of their investments. On information and belief, Defendants obtained income from other putative investors consisting of over $1,000,000.00 of investment capital.

99. Based on information and belief, this income, which Defendants herein have received from their participation and racketeering activities, and the participation in the Enterprise, has been used or invested in the operations of the Enterprise.

100. On information and belief, Defendants used the proceeds from their racketeering activity to further fund and operate Enterprises under Defendants' name. The Enterprises were entitled, but not limited to, SOLOMON CAPITAL, Z-LOFT, ZPM, GRACE CAPITAL, and RDB DEVELOPMENT. These entities were used to further operate "bait and switch" operations of Defendants' racketeering activity.

101. Defendants' use of an investment of such income is a cause of Plaintiffs' injuries, and Plaintiffs were injured by reason of Defendants' use of an investment of, such income arising from Defendants' wrongful acts of defrauding Plaintiffs through the purchase and sale of property at over-inflated and above-market rates.

102. As a result of the alleged acts and activities of Defendants and DOES 1-50, Plaintiffs have been injured in their business and property. Plaintiffs have incurred and continue to incur legal fees and costs for the prosecution of the instant matter in an attempt to recoup their investment capital. These amounts include interest and costs to recover Plaintiffs' losses and any potential judgments against Defendants in the pending lawsuit.

103. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover three times their actual damages, plus attorneys' fees and costs.

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VI.

COUNT 2: VIOLATION OF SECTION 1962(C) OF THE RICO ACT

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, RDB DEVELOPMENT and DOES 1-50)

104. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 103, inclusive, as though fully set forth herein.

105. Defendants and DOES 1-50 were and are employed by, or associated with the Enterprise. Furthermore, Defendants have participated in the conduct of the affairs of the Enterprise.

106. Defendants and DOES 1-50 have participated in the conduct of the affairs of the Enterprise by leading, running, managing, and/or directing the affairs of the Enterprise by initiating and formulating the process by which Defendants herein would bait Plaintiffs and other potential investors by offering them investments in which Plaintiffs were informed that they would receive a rate of return on the investments that were later subject to fraud by Defendants' over-inflated and above-market property transactions and sales that were operated to defraud Plaintiffs of their investment and provide Defendants with ill-gotten gains from the property transfers and/or sale. Defendants knew, or should have known, that their representations to Plaintiffs in that regard were false and fraudulent.

107. Defendants and DOES 1-50 have participated in the conduct of the affairs of the Enterprise through a pattern of racketeering activity. On information and belief, there is evidence indicating a sophisticated pattern of fraud by Defendants in which the Defendants induced the Plaintiff investors to invest with SOLOMON CAPITAL, who in turn purchased land and/or property from Defendants for over-inflated and above-market prices in order to allow for Defendants to share in the profits from the sales and to garner ill-gotten gains from Plaintiffs' investments through the perpetration of fraud.

108. As a result of the alleged acts and activities of Defendants and DOES 1-50, Plaintiffs have been injured in their business and property. Plaintiffs have been defrauded of their investment capital. Further, Plaintiffs have incurred and continue to incur legal fees and costs for

the prosecution of this matter.

109. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover three times their actual damages plus attorneys' fees and costs.

VII.

COUNT 3: VIOLATION OF SECTION 1962(D) OF THE RICO ACT

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, RDB DEVELOPMENT, KELLER WILLIAMS, and DOES 1-50)

110. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 109, inclusive, as though fully set forth herein.

111. Defendants and DOES 1-50 have conspired between themselves to use or invest the proceeds from their activities to either acquire an interest in, or establish, or operate an Enterprise, the activities of which affect interests of intrastate commerce.

112. Defendants and DOES 1-50 participated in the conduct of the affairs of the Enterprise by leading, running, managing, and/or directing the affairs of the Enterprise by initiating and/or formulating the process by which Defendants would bait Plaintiffs and other purported investors by offering them investments with a proffered rate of return. On information and belief, Defendants would then engage in the purchase and/or sale of land for over-inflated or above-market rates in order to defraud the investors of their investment capital to Defendants' benefit. Defendants knew that their representations and/or misrepresentations in that regard were false and fraudulent.

113. The conduct of Defendants outlined above further evidences and satisfies the Enterprise prong of 18 U.S.C. § 1962(a) of a RICO cause of action. The proceeds from this activity were then used to further the same racketeering activities and establish and operate further racketeering activities of the Enterprise under 18 U.S.C. § 1962(a) of a RICO cause of action.

114. Plaintiffs are informed and believe, and on that basis allege, that Plaintiffs agreed to invest, and did invest, investments with Defendants based upon Defendants' representations and misrepresentations that they were paying fair market value for the land to be purchased by

Defendants and that Plaintiffs would receive a rate of return on their investments. Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered an Enterprise to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to further the same racketeering activity evidenced herein. The use of proceeds from earlier racketeering activity to further establish and operate Defendants' ongoing racketeering activities satisfies the requirements of an Enterprise under 18 U.S.C. § 1962(a).

115. As a result of the alleged acts and activities of Defendants and DOES 1-50, Plaintiffs have been injured in their business and property. Plaintiffs have incurred and continue to incur legal fees and costs for the prosecution of this matter.

116. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover three times their actual damages, plus attorneys' fees and costs.

VIII.

COUNT 4: VIOLATION OF SECTION 10B AND RULE 10B-5 OF THE 1934 ACT

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, RDB DEVELOPMENT, KELLER WILLIAMS, and DOES 1-50)

117. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 116, inclusive, as though fully set forth herein.

118. Defendants engaged in a scheme to secure money from investors and purchase land at highly inflated or above-market rates and disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

119. Defendants violated §10(b) and Rule 10b-5 of the 1934 Act in that they:

(a) Employed devices, schemes and artifices to defraud Plaintiffs;

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(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiffs with Defendants' purchases of land at highly inflated or above-market rates using investor funds.

120. Plaintiffs have suffered damages in that, in reliance on Defendants' representations, their investments were used to pay an artificially inflated or above-market price for the Solomon Towers Property. Plaintiffs would not have invested in the Property at the rate presented, or at all, if they had been aware that the purchase price for the land had been artificially and falsely inflated as part of Defendants' scheme.

121. As a direct and proximate result of Defendants' violation of §10(b) and Rule 10b-5 of the 1934 Act, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, and development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits.

IX.

COUNT 5: VIOLATION OF SECTION 12(A) OF THE 1933 ACT

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELENAK, VENTO, RDB DEVELOPMENT, KELLER WILLIAMS, and DOES 1-50)

122. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 121 inclusive, as though set forth fully herein.

123. Defendants violated 15 U.S.C. § 77l in that they:

(a) Offered to sell a security by oral communication; and,

(b) Made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they

were made, not misleading.

124. Plaintiffs suffered damages in that, in reliance on the statements of Defendants, Plaintiffs' investment funds were used to pay a highly inflated or above-market price for the Property. Plaintiffs would not have invested in the Property at the rate presented, or at all, if they had been aware that the purchase price for the land had been artificially and falsely inflated as part of Defendants' scheme.

125. As a direct and proximate result of Defendants' violation of §12(a) of the 1933 Act, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, and development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs are entitled to restitution of all monies invested with Solomon Capital, with interest thereon.

X.

COUNT 6: VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200, ET SEQ.

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELENAK, VENTO, RDB DEVELOPMENT, KELLER WILLIAMS, and DOES 1-50)

126. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 125 inclusive, as though set forth fully herein.

127. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants and DOES 1-50 as alleged herein constituted unlawful, unfair, and fraudulent business acts and practices within the meaning of California Business and Professions Code § 17200, et seq.

128. Plaintiffs agreed to invest, and in fact did invest with Defendants based upon Defendants' representations and misrepresentations that they were paying fair market value for

the land to be purchased by Defendants and that Plaintiffs would receive a rate of return on their investments. Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors. Defendants' deception constitutes a fraudulent business practice under the California Unfair Competition Law in that Defendants failed to disclose these fraudulent practices to investors prior to investment.

129. As a result of the foregoing, pursuant to California Business & Professions Code §17203, Plaintiffs seek an Order of this Court requiring Defendants to immediately cease such acts of unfair competition and enjoining Defendants from continuing to take investments from investors. Plaintiffs additionally request an Order of this Court requiring the payment or return of any monies wrongfully acquired, saved, or retained by Defendants by means of such acts of unfair competition so as to restore to Plaintiffs any and all monies which were acquired and obtained by means of such acts of unfair competition and/or as may be necessary to prevent the use or employment of any practices which constitutes unfair competition, as well as imposing an asset freeze or a constructive trust over such monies.

130. Therefore, Plaintiffs seek an Order of this Court for all appropriate available remedies under California Business & Professions Code §17203.

XI.

COUNT 7: BREACH OF FIDUCIARY DUTY

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER and DOES 1-50)

131. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 130 inclusive, as though set forth fully herein.

132. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER had a special relationship with Plaintiffs, in that Defendants assumed a fiduciary position in relation to the investors as investment advisers, trustees of the accounts, and managing partners of projects,

ventures, and the limited liability company. As such, Defendants were fiduciaries as to Plaintiffs. Defendants breached their fiduciary duty to Plaintiffs by failing to make full disclosure of all material facts concerning the transactions that might have affected Plaintiffs' investment decisions. The Plaintiffs' losses were caused by and have resulted directly from the action, misrepresentations, and omissions of Defendants.

133. As fiduciaries, Defendants owed a duty of utmost care, integrity, honesty and loyalty toward Plaintiffs. Defendants breached their fiduciary duty to Plaintiffs by, among other things, misrepresenting that Defendants were paying fair market value for the land to be purchased by Defendants and that Plaintiffs would receive a rate of return on their investments. Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors.

134. As a direct and proximate result of the breach of fiduciary duty by Defendants, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, and development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits.

135. The Defendants' conduct as described above, involved malice, oppression and fraud, and such conduct was clearly despicable. Such despicable and fraudulent conduct was plainly conducted by the officers, directors, and/or managing agents of these Defendants and was ratified by them, and by the Defendant corporation, SOLOMON CAPITAL. Accordingly, the Court should assess punitive damages against these Defendants.

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XII.

COUNT 8: BREACH OF CONTRACT

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER and DOES 1-50)

136. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 135 inclusive, as though set forth fully herein.

137. In or about March 2005, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER entered into an Operating Agreement with Plaintiffs. A true and correct copy of the Operating Agreement is attached hereto as Exhibit "C" to the Complaint.

138. As part of this Operating Agreement, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, as managers of Solomon Towers, LLC, agreed, among other things, to use company funds only to further the purposes of the company (Section 3.3), not to commingle the funds with their own or others' funds (Sections 3.3, 4.6, and 9.2), not to knowingly perform any act that contravened the Operating Agreement or was inconsistent with the purposes of the company (Section 4.6), and to keep accurate books and records for the company (Section 9.1).

139. Defendants breached this Operating Agreement with Plaintiffs by, among other things, commingling the company's funds with their own, and using the funds for things other than those in furtherance of the purposes of the company, such as a one million dollar commission payment to Defendants' real estate broker, Defendant ZELEZNAK (who was also the owner of the land being purchased). In addition, Defendants concealed this commingling and misuse of investor funds by keeping inaccurate or incomplete financial books and records. As a result, Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors.

140. As a direct and proximate result of the breach of the Operating Agreement by Defendants, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully

earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, and development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits.

141. The Defendants' conduct as described above, involved malice, oppression and fraud, and such conduct was clearly despicable. Such despicable and fraudulent conduct was plainly conducted by the officers, directors, and/or managing agents of these Defendants and was ratified by them, and by the Defendant corporation, SOLOMON CAPITAL. Accordingly, the Court should assess punitive damages against these Defendants.

XIII.

COUNT 9: NEGLIGENT MISREPRESENTATION

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, and DOES 1-50)

142. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 141, inclusive, as though set forth fully herein.

143. Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER and through their agents, officers, directors, and employees, represented and promised Plaintiffs that Defendants were paying fair market value for the land to be purchased by Defendants and that Plaintiffs would receive a rate of return on their investments. Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors.

144. Defendants made these misrepresentations to induce Plaintiffs into purchasing the subject investments and securities from the company Defendants.

145. At the time the Defendants made these written and oral misrepresentations, Defendants knew or should have known that they were not true. Defendants knew or should have known that they could not fulfill these promises.

146. Plaintiffs relied upon these written and oral statements in purchasing the investments and securities, without any knowledge Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. Had Plaintiffs known the truth, Plaintiffs would never have purchased the investments and securities from Defendants.

147. As a direct and proximate result of the breach of fiduciary duty by Defendants, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits.

148. The Defendants' conduct as described above, involved malice, oppression and fraud, and such conduct was clearly despicable. Such despicable and fraudulent conduct was plainly conducted by the officers, directors, and/or managing agents of these Defendants and was ratified by them, and by the Defendant corporation, SOLOMON CAPITAL. Accordingly, the Court should assess punitive damages against these Defendants.

XIV.

COUNT 10: INTENTIONAL MISREPRESENTATION

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, and DOES 1-50)

149. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 148, inclusive, as though fully set forth herein.

150. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, through their agents, officers, directors, and employees, represented and promised Plaintiffs that Defendants were paying fair market value for the land to be purchased by Defendants and that Plaintiffs would receive a rate of return on their investments. Plaintiffs were lured into transactions believing that Defendants were paying fair market value for the land subject to the investment when Defendants had, in fact, agreed and engineered to purchase the land at highly inflated or

above-market rates in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. The proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors.

151. At the time that the Defendants made these written and oral representations to Plaintiffs, they knew that they were not true. Defendants in fact had no intention of fulfilling these promises and instead used this deception to trick Plaintiffs into purchasing investments and securities when Defendants had no intention of purchasing land at fair market value for the benefit of the Plaintiff investor. Instead, Defendants intended to and did purchase overly inflated land at above market rates, in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. Certain proceeds from this wrongful activity were then used by Defendants to continue to perpetrate the fraud upon other investors.

152. Plaintiffs relied upon these written and oral statements in purchasing the investments and securities, without any knowledge that Defendants intended to and did purchase overly inflated land at above market rates, in order to defraud the investors and garner ill-gotten gains for the Defendants' benefit. Had Plaintiffs known the truth, Plaintiffs would never have purchased the investments and securities for any purpose whatsoever.

153. As a direct and proximate result of the breach of fiduciary duty by Defendants, Plaintiffs have been injured in their business and property. Portions of Plaintiffs' investments have been transferred to the Defendants or third parties in the form of wrongfully earned sales prices for land purchased at over inflated or above-market values, commissions on the land sales, closing fees and costs, development costs on over-encumbered land. Plaintiffs have incurred and continue to incur legal fees and costs to recover such losses and any potential judgments against Defendants in the pending lawsuits.

154. The Defendants' conduct as described above, involved malice, oppression and fraud, and such conduct was clearly despicable. Such despicable and fraudulent conduct was plainly conducted by the officers, directors, and/or managing agents of these Defendants and was ratified by them, and by the Defendant corporation, SOLOMON CAPITAL. Accordingly, the Court should assess punitive damages against these Defendants.

XV.

COUNT 11: CONSPIRACY

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, RDB DEVELOPMENT, KELLER WILLIAMS, and DOES 1-50)

155. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 154 inclusive, as though set forth fully herein.

156. On information and belief, at least as early as February 2005, and perhaps earlier, Defendants, and each of them, knowingly and willfully conspired and agreed among themselves to sell real property to the Plaintiff investors for prices significantly over market value while promising fair returns on the investment, then to collect profits from the investments, leaving the properties severely undercapitalized, and leaving the investors with no return on their investment.

157. Defendants' "Ponzi scheme" involved the "operators," SOLOMON CAPITAL, RONALD BUCHHOLZ, and CHARICE FISCHER that raised the investment capital, the "speculators," DONALD ZELEZNAK, Z-LOFT, LLC, JONATHON VENTO, and GRACE CAPITAL, that purchased the land in advance in preparation for later sale to the investors at a highly inflated price, and the "agent and broker" DONALD ZELEZNAK, KELLER WILLIAMS dba ZELEZNAK PROPERTY MANAGEMENT ("ZPM"), and KELLER WILLIAMS REALTY, INC. ("KELLER WILLIAMS"), that facilitated the transactions and received, in some instances, 20% (twenty percent) commission rates. The proceeds from this fraudulent Enterprise were then used by Defendants to perpetrate a fraud upon other investors.

158. Defendants SOLOMON CAPITAL, RONALD BUCHHOLZ, and CHARICE FISCHER did the acts and things alleged herein pursuant to, and in furtherance of, the conspiracy and above-alleged agreement.

159. Defendants DONALD ZELEZNAK, Z-LOFT, ZPM, LLC, JONATHON VENTO, and GRACE CAPITAL, LLC dba GRACE COMMUNITIES furthered the conspiracy by purchasing the Property in advance and offering it for investment.

160. Defendants DONALD ZELEZNAK, ZPM, and KELLER WILLIAMS furthered the conspiracy by acting as the agent and broker in the transaction.

161. Plaintiffs are informed and believe and thereon allege that the last overt act in pursuance of the above-described conspiracy occurred in or about June of 2006, when the Defendants sought additional capital from Plaintiffs for the Property.

162. Plaintiffs did not have knowledge of the above-described conspiracy at the time it was taking place. Plaintiffs could not have discovered the above-described conspiracy in the exercise of reasonable diligence because Plaintiffs were not sophisticated investors, because Plaintiffs relied on Defendants upholding their fiduciary duty to Plaintiffs, and because Defendants concealed their activities between several parties and fictional entities. Plaintiffs actually discovered the above-described conspiracy in or about July 2007, when they were contacted by the Santa Clara County District Attorney's office relative to its investigation of Defendants' activities.

163. As a proximate result of the wrongful acts herein alleged, Plaintiffs have been generally damaged through the loss of their initial investments, as well as subsequent capital contributions.

164. In doing the acts and things alleged herein, Defendants acted with malice and fraud as defined in Cal. Civil Code section 3294(c) in that they acted willfully and with intent to cause injury to the Plaintiffs and in conscious disregard of Plaintiffs' rights. Accordingly, the Court should assess punitive damages against these Defendants.

XVI.

COUNT 12: ALTER EGO

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, RDB DEVELOPMENT and DOES 1-50)

165. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 164 inclusive, as though fully set forth herein.

166. On information and belief, there exists, and at all times herein mentioned there existed, a unity of interest and ownership between Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, and FISCHER, such that any individuality and separateness between Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, and

FISCHER has ceased, and Defendants SOLOMON CAPITAL and RDB DEVELOPMENT are the alter ego of Defendants BUCHHOLZ and FISCHER. Defendants BUCHHOLZ and FISCHER used assets of the corporations for their personal uses, caused assets of the corporations to be transferred to them without adequate consideration, undercapitalized the corporate investments, and withdrew funds from the corporation's bank accounts for their own personal use. Defendants BUCHHOLZ and FISCHER used funds from SOLOMON CAPITAL, in connection with RDB DEVELOPMENT for their own personal residences and vehicles and/or applied funds from SOLOMON CAPITAL accounts in furtherance of Defendants' fraudulent Enterprise, as described herein.

167. On information and belief, Defendants SOLOMON CAPITAL and RDB DEVELOPMENT are, and at all times herein mentioned were, mere shells, instrumentalities, and conduits through which Defendants BUCHHOLZ and FISCHER carried on their fraudulent investment business in the corporate name, exercising complete control and dominance of such businesses to such an extent that any individuality or separateness of Defendants SOLOMON CAPTIAL and RDB DEVELOPMENT and Defendants BUCHHOLZ and FISCHER does not, and at all times herein mentioned did not, exist.

168. Therefore, Plaintiffs request that this Court disregard the corporate formalities of Defendants SOLOMON CAPTIAL and RDB DEVELOPMENT and treat them as the alter egos of Defendants BUCHHOLZ and FISCHER.

XVII.

COUNT 13: FRAUD

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, RDB DEVELOPMENT, and DOES 1-50)

169. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 168 inclusive, as though fully set forth herein.

170. Defendants failed to disclose the facts alleged herein, all of which were within their knowledge at the time that Plaintiffs rendered their investments. Defendants made false and misleading representations to Plaintiffs concerning the fair market value of the Property as

alleged herein, and the fact that Defendants and those involved in the Enterprise would benefit in a manner undisclosed to Plaintiffs. Defendants took affirmative actions in order to prevent Plaintiffs from discovering the value of the Property, including, but not limited to, misrepresentations by omission of material facts regarding the value of the Property at the time of purchase, and the fact that the Property was being purchased from known associates of Defendants, namely Defendants ZELEZNAK and VENTO, and/or their related companies, ZPM, Z-LOFT, or GRACE CAPITAL.

171. Defendants knew that the representations alleged herein were false and misleading at the time they were made.

172. Defendants made the aforesaid representations with an intent to defraud and intentionally mislead Plaintiffs, and to induce Plaintiffs to act in reliance on these representations, including causing Plaintiffs to place investments with Defendants for the purchase of the Property.

173. Plaintiffs were unaware of the falsity and intentionally misleading nature of the aforementioned representations, including, but not limited to the misrepresentations by omission of material facts, and justifiably acted in reliance upon the aforesaid representations. Plaintiffs' reliance was justifiable based upon the fiduciary relationship that Defendants had assumed with Plaintiffs and Plaintiffs, therefore, had a responsibility to fully disclose all information concering the Solomon Towers project to Plaintiffs in a full and truthful manner.

174. As a direct and proximate result of Defendants' false and intentionally misleading representations and concealment of the facts as alleged herein, Plaintiffs have been damaged and are entitled to compensation in an amount to be determined according to proof. Such damages include, but are not limited to, the loss of investment obtained by fraud and loss of interest on the investment capital.

175. Furthermore, as a result of Defendant's intentionally false and misleading representations, Plaintiffs are entitled to exemplary and punitive damages.

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XVIII.

COUNT 14: CONSTRUCTIVE FRAUD

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER RDB DEVELOPMENT, and DOES 1-50)

176. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 175 inclusive, as though fully set forth herein.

177. In their respective roles as the issuers of the unqualified securities and as the managing members of Solomon Towers, LLC and the Solomon Towers project, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER individually and collectively owed to Plaintiff certain duties to make the fullest disclosure of all material facts that might affect Plaintiffs' decision to provide money to SOLOMON CAPITAL, BUCHHOLZ, and FISCHER for use in the Solomon Towers project.

178. Defendants failed to disclose the facts alleged herein, all of which were within their knowledge at the time that Plaintiffs rendered their investments. Defendants made false and misleading representations to Plaintiffs concerning the fair market value of the Property as alleged herein, and the fact that Defendants and those involved in the Enterprise would benefit in a manner undisclosed to Plaintiffs. Defendants took affirmative actions in order to prevent Plaintiffs from discovering the value of the Solomon Towers project and the Property, including, but not limited to, misrepresentations by omission of material facts regarding the value of the Solomon Towers project and the Property at the time of purchase, and the fact that the Solomon Towers project and the Property were being purchased from known associates of Defendants, namely Defendants ZELEZNAK and VENTO, and/or their related companies, ZPM, Z-LOFT, or GRACE CAPITAL.

179. Plaintiffs were unaware of the falsity and intentionally misleading nature of the aforementioned representations, including, but not limited to the misrepresentations by omission of material facts, and justifiably acted in reliance upon the aforesaid representations. Plaintiffs' reliance was justifiable based upon the fiduciary relationship that Defendants had assumed with Plaintiffs. Defendants, therefore, had a responsibility to fully disclose all information concerning

the Solomon Towers project to Plaintiffs in a full and truthful manner.

180. At all times mentioned herein, Plaintiffs were unaware of the existence of the aforementioned material misrepresentations and omissions of material fact regarding the Solomon Towers project and Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER's use of the monies conveyed to Defendants for the Solomon Towers project.

181. As a result of Defendants' failure to make full disclosure of material facts as well as Defendants' misrepresentation of material facts that might have affected Plaintiffs' decision to provide money to Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER for use in the Solomon Towers project, Plaintiffs did, in fact, transfer the funds to Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER and have been damaged and are now entitled to compensation in an amount to be determined according to proof. Such damages include, but are not limited to, actual damages, interest thereon, punitive damages, attorney's fees, and other damages according to proof.

XIX.

COUNT 15: RESCISSION BASED ON MATERIAL MISREPRESENTATION AND SECURITIES TRANSACTION PURSUANT TO CAL. CORP. CODE SECTIONS 25501 AND 25401

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, and DOES 1-50)

182. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 181, inclusive, as though fully set forth herein.

183. On or about February 2005, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, in Santa Clara County, California, offered and sold to Plaintiffs and investors a total of $5,100,000.00 of the membership interest in the limited liability company of Solomon Towers project. That transaction was made by means of both a written and oral presentation and communication. The presentation was in the form of a Power Point presentation which omitted to state material facts necessary in order to make the statements made in that communication, in light of the circumstances under which they were made, not misleading. (Exhibits "A" and "B".) The communications failed to set forth that the land being purchased by the Solomon Towers project investment group would be done so at an over-inflated and above

fair market value price. A true copy of the Power Point presentation and pro-forma financials are attached as Exhibits "A" and "B" and incorporated by reference.

184. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the pre-existing relationship between Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL with Defendants ZELEZNAK and VENTO and their partnership entities Z-LOFT, ZPM, and GRACE CAPITAL. The failure to disclose this fact constitutes a material omission since the Property was purchased by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, on behalf of the Plaintiff investors, from Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL.

185. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the fact that the Property was not worth the amount that would be paid. Further, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER failed to disclose the fact that the comparable square foot value for land in the area at the time of purchase was approximately $33.19 per square foot, not the $178.75 per square foot amount paid by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL to Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL.

186. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the an accurate purchase price per square foot of the Property. According to the documentation presented to the investors, the purchase price per square foot for the Property was $153.05 per square foot when, in fact, the purchase price paid by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL to Defendants ZELEZNAK and VENTO, and/or their companies, Z-LOFT, ZPM, and GRACE CAPITAL was actually $178.75 per square foot.

187. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit

"A"), failed to disclose the fact that the real estate agent and broker for the transaction, ZELEZNAK and ZPM, was also the seller of the Property. Further, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER failed to disclose the fact that ZELEZNAK received a $1,000,000 commission for his role as the seller's agent for the transaction. (See Exhibit "D") This commission rate is equivalent to a 20% (twenty-percent) commission which far exceeds the prevailing market rate of 5% to 6% for sales transactions involving raw land. Based on information and belief, ZELEZNAK and ZPM acted in a dual agency role in connection with the purchase and sale of the Property. Defendant ZELEZAK and ZPM's dual agency was similarly not disclosed by Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER to the Plaintiff investors.

188. Based on information and belief, Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose the fact that ZELEZNAK and VENTO, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL would receive a distribution of the purchase and sale proceeds from the transaction. Defendants further failed to disclose the pre-existing relationship between Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL and Defendants VENTO and ZELEZNAK and the fact that VENTO and ZELEZNAK were involved in the GRACE CAPITAL partnership with the real estate agent for the transaction, ZELEZNAK who was also the seller of the Property. Based on information and belief, Defendant VENTO and ZELEZNAK received a distribution from the purchase and sale proceeds from the transaction at issue for the Property. Defendants VENTO and ZELEZNAK, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL qualify as materially aiding personnel under the Cal. Corporations Code and are, therefore, jointly and severally liable under the Code.

189. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), failed to disclose that the Plaintiff investors may be subject to supplemental capital obligations in the future. The Plaintiff investors were told that they had no obligation beyond

their initial investment. The Proforma Finance & Investment Analysis: 10 Stories (Exhibit "A") states: "Required Equity: $5,000,000." The Plaintiff investors were informed that no further capital contribution would be "required" of them both verbally and in writing by Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL. At the time that Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL solicited and received the investments, however, Defendants were aware of the fact that the project was severely undercapitalized. Defendants failed to disclose that information to Plaintiff investors.

190. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the actual size of the Property to the Plaintiff investors by a material amount. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER represented that the parcel size for the Property was ¾ of an acre, approximately 32,670 square feet. The tax records for the Property, however, clearly show that the Property is approximately 28,000 square feet, over 4,000 square feet smaller than SOLOMON CAPITAL represented to the Plaintiff investors.

191. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the actual return or "profit" to the Plaintiff investors. The Proforma Finance & Investment Analysis: 10 Stories (Exhibit "A") states: "Investor Profit: 50%." To date the Plaintiff investors have received no return on investment from the Solomon Towers project. To the contrary, the Plaintiff investors have been requested to make further capital call contributions to the project. Further, according to pro forma financials disseminated by Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER on Friday, February 29, 2008, the Solomon Towers project is in severe financial distress and overleveraged in amount in excess of $2,400,000. (Exhibit "E")

192. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the zoning for the project. The Sales Pro Forma document for the Power Point presentation states that the project would be for 15 stories. Based on information and

belief, however, the land, at the time of purchase and sale, was only zoned for 10 stories.

193. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER, in connection with the presentation to the Plaintiff investors regarding the Solomon Towers project (See Exhibit "A"), misrepresented the timeline for completion of the project and return of investment capital and profits to the Plaintiff investors. According to the presentation to the investors in February of 2005, the project would require: (1) 60 days to acquire the land, (2) 9-12 months to explore project definition, and (3) 2 years for build out and marketing. Thus, according to Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER CAPITAL's representations to the Plaintiff investors, the Solomon Towers project would be complete and in the sales phase within 3 years and 2 months, or April of 2008. To date, however, construction has not begun on the project and the project is in severe financial distress.

194. Defendants SOLOMON CAPITAL, BUCHHOLZ, and FISCHER misrepresented to the Plaintiff investors that they were buying into a viable investment opportunity for a high rise condominium project. The reality, however, was the that Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, Z-LOFT, ZPM, GRACE CAPITAL, ZELEZNAK and VENTO through the investment scheme and Enterprise, had already extracted any potential profits from the potential investment for themselves through the fraudulent Enterprise. The plaintiff investors were then left with a project that was not viable since it was "under water," meaning that the debt on the project so far outweighed the value that development prospects were no longer possible absent an extreme pro forma or forecasted loss.

195. As a result of the material misrepresentations and omissions, Plaintiffs are entitled to rescind the above-described purchases of membership interest in Solomon Towers, LLC.

196. Plaintiffs will tender to Defendants their membership interest in Solomon Towers, LLC, for the above-described securities as purchased from Defendants and on which to date Plaintiffs have received $0 in total income.

197. Therefore, Plaintiffs seek an Order of this Court for the appropriate available remedy of rescission and return of Plaintiffs' investment capital with interest from the date of the investment pursuant to Cal. Corp. Code §§ 25501 and 25401.

XX.

COUNT 16: JOINT AND SEVERAL LIABILITY OF MANAGEMENT PRINCIPALS AND MATERIALLY AIDING PERSONNNEL PURSUANT TO CAL. CORP. CODE SECTION 25501, 25401, AND 25504

(Against Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, KELLER WILLIAMS, and DOES 1-50)

198. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 197, inclusive, as though fully set forth herein.

199. Defendants ZELEZNAK, VENTO, Z-LOFT, GRACE CAPITAL, RDB DEVELOPMENT, ZPM, and KELLER WILLIAMS, at the time of acts alleged herein, materially assisted in the perpetration of the Enterprise and fraud upon the Plaintiffs. Based on information and belief, Z-LOFT, LLC purchased property in less desirable areas for market rate, and then sold the property to SOLOMON CAPTIAL investors for significantly more than the market rate. Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, Z-LOFT, VENTO, GRACE CAPITAL, ZPM, and KELLER WILLIAMS profited on the overly inflated and above-market value sale of the land to the detriment and loss of the Plaintiff investors.

200. Based on information and belief, Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, ZELEZNAK, VENTO, GRACE CAPITAL, ZPM, and, KELLER WILLIAMS had a pre-existing relationship prior to the purchase and sale transaction of the Property and have conducted similar transactions with other investor groups to further perpetrate the fraudulent Enterprise discussed herein.

201. Defendants ZELEZNAK owned and managed Soho Lofts, LLC. Soho Lofts, LLC changed its name to Z-LOFT, LLC on August 17, 2004. On July 25, 2002, Soho Lofts LLC purchased the Property, located at 625-643 N. 2nd Avenue, Phoenix, AZ from Core Builders, Inc. for $392,000.00. According to the tax records, the square footage of the Property is 28,000 square feet. Accordingly, the cost for this transaction was $14.00 per square foot.

202. On April 11, 2005, Defendants ZELEZNAK and VENTO, and/or their related entities Z-LOFT, ZPM, or GRACE CAPITAL sold the Property to Solomon Towers, LLC for

$5,004,929.00. The cost per square foot for this transaction was $178.75 per square foot. Based on information and belief and historical comparative research conducted in Spring 2007, the current market rate for the land from February to March 2005 was approximately $33.19 per square foot.

203. Based on information and belief, Plaintiffs allege that Defendants Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK and VENTO all profited on the over-inflated and above market "pump and dump" sale to the detriment of the Plaintiff investors. Defendants ZPM and ZELEZNAK received a commission on the sale of the Property of $1,000,000.00 (one million dollars.) This commission rate is equivalent to a 20% (twenty-percent) commission which far exceeds the prevailing market rate of 5% to 6% for sales transactions involving raw land. The implications of this commission for the sale of the Property supports the conclusion that Defendants KELLER WILLIAMS and ZELEZNAK knowing and materially aided and assisted Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, Z-LOFT, ZPM, GRACE CAPITAL, ZELEZNAK and VENTO to perpetrate the fraud and the Enterprise as discussed herein against the Plaintiffs. The implications of the over-inflated and above market commission for the sale of the Property from Defendants Z-LOFT, GRACE CAPITAL, VENTO and ZELEZNAK to the Plaintiffs supports the conclusion that Defendants Z-LOFT, ZPM, GRACE CAPITAL, ZELEZNAK and VENTO knowingly and materially aided and assisted in an Enterprise to perpetrate the fraud as discussed herein against the Plaintiffs.

204. Plaintiffs have been damaged in an amount to be proven at trial. Therefore, Plaintiffs seek an Order of this Court for all appropriate available remedies under California Corporations Code §§ 25501, 25401, and 25504.

XXI.

COUNT 17: RESCISSION OF SALE OF SECURITIES NOT QUALIFIED FOR SALE AND RESTITUTION OF CONSIDERATION PAID PURSUANT TO CAL. CORP. CODE SECTIONS 25503, 25102(F), AND 25110

(Against Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, and DOES 1-50)

205. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 204 inclusive, as though fully set forth herein.

206. On or about February 2005, Defendants BUCHHOLZ, FISCHER, and SOLOMON CAPITAL, offered and sold to Plaintiffs and investors a total of $5,100,000.00 of membership interest on Solomon Towers, LLC. Defendants were the issuers of the investments and engaged in the trading of such securities. The Operating Agreement for the Solomon Towers project is attached hereto as Exhibit "C".

207. This sale constituted an issuer transaction in that it was part of an initial offering of membership interest for capitalization purposes for Solomon Towers, LLC, and the issuers directly benefited from Plaintiffs' investment of securities and received a portion of the investments as the issuer of the security. At the time of Plaintiffs' acquisition and membership interests and investment in Solomon Towers, LLC, the sale was subject to qualification, was not exempt from qualification, and was not, and to the date of this Complaint, has not been qualified as any kind of securities transaction with the Commissioner of Corporations.

208. As a result of the above-described acts, Defendants are liable to Plaintiffs, who are entitled to and hereby do, rescind the above-described purchase. Plaintiffs will tender before entry of judgment to Defendants their membership interests in the above-described security as purchased from Defendants and on which to date Plaintiffs have received $0 in total income.

Plaintiffs are informed and believe that the consideration given for the securities herein may not be capable of being returned in that the investment consideration was used to purchase property for an over-inflated and above fair market value in order to benefit Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, ZELEZNAK, VENTO, Z-LOFT, GRACE CAPITAL, ZPM, and KELLER WILLIAMS. The purchase of the Property at issue for the over-inflated and above fair market valuation constituted fraud upon the Plaintiffs and resulted in the distribution of ill-gotten gains to Defendants SOLOMON CAPITAL, BUCHHOLZ, FISCHER, ZELEZNAK, VENTO, Z-LOFT, GRACE CAPITAL, ZPM, and KELLER WILLIAMS. Further, there are multiple outstanding loans against the property and certain noteholders have intimated that foreclosure proceedings would pursue.

209. Plaintiffs have been damaged in an amount to be proven at trial. Therefore, Plaintiffs seek an Order of this Court for all appropriate available remedies under California

Corporations Code §§ 25503, 25102(f), and 25110.

XXII.

COUNT 18: JOINT AND SEVERAL LIABILITY OF MANAGEMENT PRINCIPALS AND MATERIALLY AIDING PERSONNNEL PURSUANT TO CAL. CORP. CODE SECTIONS 25503, 25102(F), AND 25110

(Against Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, Z-LOFT, GRACE CAPITAL, ZPM, ZELEZNAK, VENTO, KELLER WILLIAMS, and DOES 1-50)

210. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 209, inclusive, as though fully set forth herein.

211. Defendants ZELEZNAK and VENTO, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL, at the time of acts alleged herein, materially assisted in the perpetration of the Enterprise and fraud upon the Plaintiffs and other putative investors. Based on information and belief, Defendants ZELEZNAK and VENTO, and/or their related companies Z-LOFT, ZPM, and GRACE CAPITAL, purchased property in less desirable areas for market rate, and then sold the property to SOLOMON CAPTIAL investors for significantly more than the market rate. Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, ZELEZNAK, VENTO, Z-LOFT, GRACE CAPITAL, ZPM, and KELLER WILLIAMS profited on the overly inflated and above-market value sale of the land to the detriment and loss of the Plaintiff investors.

212. Based on information and belief, Defendants SOLOMON CAPITAL, RDB DEVELOPMENT, BUCHHOLZ, FISCHER, ZELEZNAK, VENTO, ZPM, and KELLER WILLIAMS had a pre-existing relationship prior to the purchase and sale transaction of the Property and have conducted similar transactions with other investor groups to further perpetrate the fraudulent Enterprise discussed herein.

213. Defendants ZELEZNAK owned and managed Soho Lofts, LLC. Soho Lofts, LLC changed its name to Z-LOFTS, LLC on August 17, 2004. On July 25, 2002, Soho Lofts LLC purchased 625-643 N. 2nd Avenue, Phoenix, AZ (hereinafter referred to as "the Property") from Core Builders, Inc. for $392,000. According to the tax records, the square footage of the Property is 28,000 square feet. Accordingly, the cost for this transaction was $14.00 per square foot.

214. On April 11, 2005, Defendants ZELEZNAK and VENTO, and/or their related entities Z-LOFT or GRACE CAPITAL sold the Property to Solomon Towers, LLC for $5,004,929. The cost per square foot for this transaction was $178.75 per square foot. Based on information and belief and historical comparative research conducted in Spring 2007, the current market rate for the land from February to March 2005 was approximately $33.19 per square foot.

215. Based on information and belief, Plaintiffs allege that Defendants Z-LOFT, GRACE CAPITAL, RDB DEVELOPMENT, ZPM, ZELEZNAK and VENTO all profited on the over-inflated and above market "pump and dump" sale to the detriment of the Plaintiff investors. Defendants ZPM and ZELEZNAK received a commission on the sale of the Property of $1,000,000 (one million dollars.) This commission rate is equivalent to a 20% (twenty-percent) commission which far exceeds the prevailing market rate of 5% to 6% for sales transactions involving raw land. The implications of this commission for the sale of the Property supports the conclusion that Defendants ZPM and ZELEZNAK knowing and materially aided and assisted Defendants BUCHHOLZ, FISCHER, SOLOMON CAPITAL, RDB DEVELOPMENT, Z-LOFT, ZPM, GRACE CAPITAL, ZELEZNAK, VENTO, and KELLER WILLIAMS to perpetrate the fraud and the Enterprise as discussed herein against the Plaintiffs. The implications of the over-inflated and above market commission for the sale of the Property from Defendants Z-LOFT, ZPM, GRACE CAPITAL, VENTO and ZELEZNAK to the Plaintiffs supports the conclusion that Defendants Z-LOFT, ZPM, GRACE CAPITAL, ZELEZNAK, VENTO, and KELLER WILLIAMS knowingly and materially aided and assisted in an Enterprise to perpetrate the fraud as discussed herein against the Plaintiffs.

216. Plaintiffs have been damaged in an amount to be proven at trial. Therefore, Plaintiffs seek an Order of this Court for all appropriate available remedies under California Corporations Code §§ 25503, 25102(f), and 25110.

XXIII.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, by and through their attorneys, pray for judgment against Defendants, and each of them, as follows:

1. For rescission of the purchase and recovery of investment capital as the original consideration paid for the securities at issue;
2. For interest on the value of the original consideration at the legal rate from the date of purchase and transfer of the consideration;
3. For actual damages incurred to be proven at trial with interest thereon;
4. For costs of suit herein incurred;
5. For recovery of attorneys' fees;
6. For punitive damages;
7. For a permanent injunction preventing Defendants from further profiting from or disgorging said profits from their fraudulent Enterprise; and
8. For such other and further relief as the Court may deem proper.

Dated: April 30, 2008

ROPERS, MAJESKI, KOHN & BENTLEY

By: _____
TODD A. ROBERTS
JESSHILL E. LOVE
Attorneys for Plaintiffs
STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, an individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, an individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company

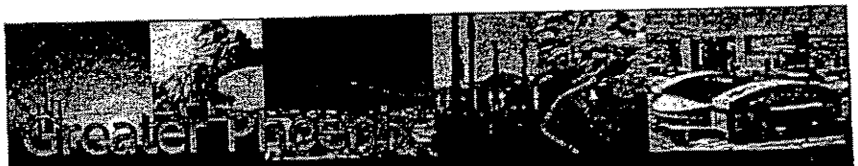
Private Investment Offering

Solomon Capital, Inc.

February 2005

New Investing Paradigm

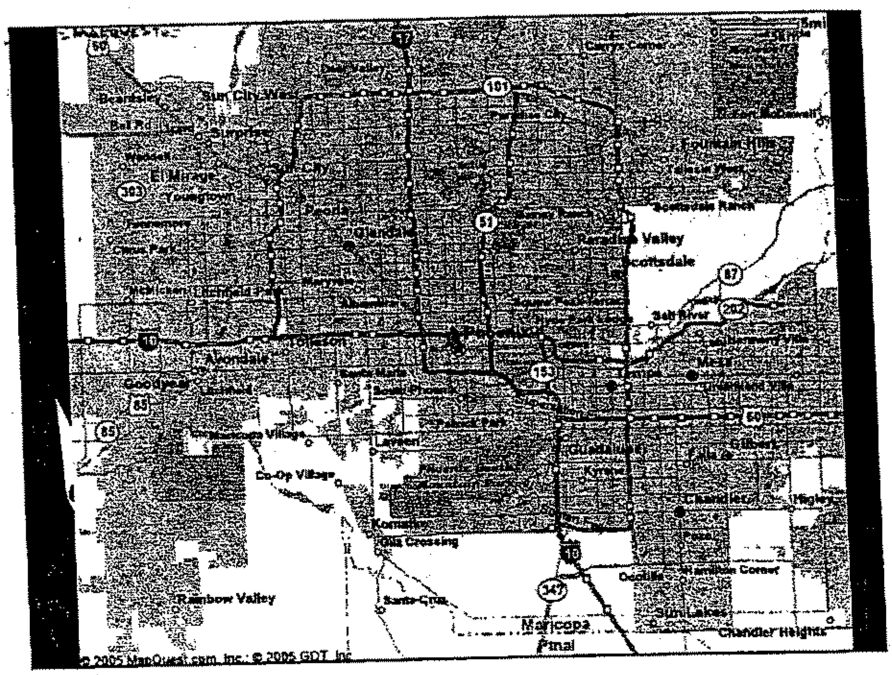
- Welcome to the Next Level
- Next Evolution of the "Performance Investors"
- Emphasis on Partnership
- Achieve Success Together

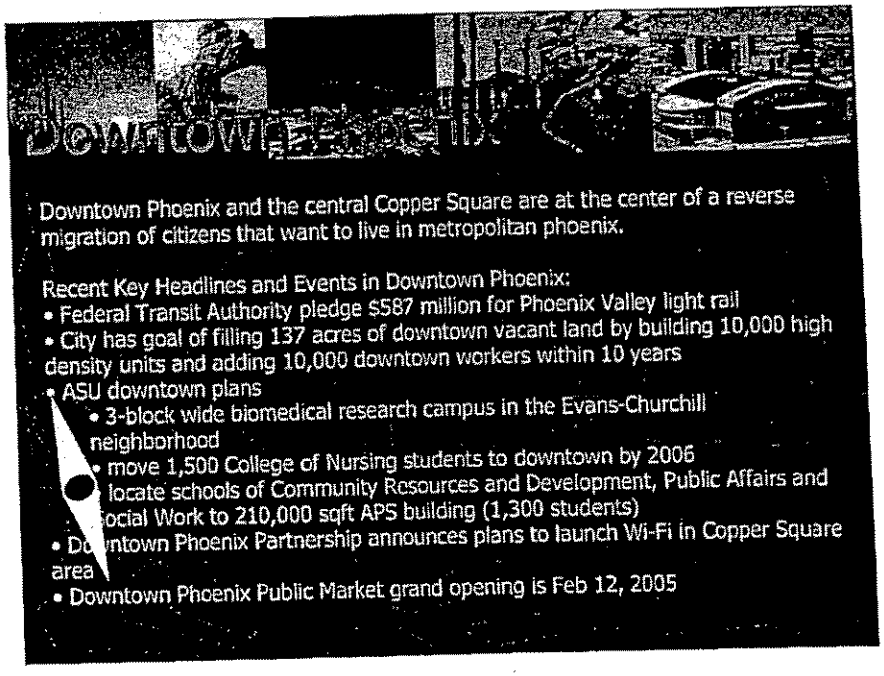


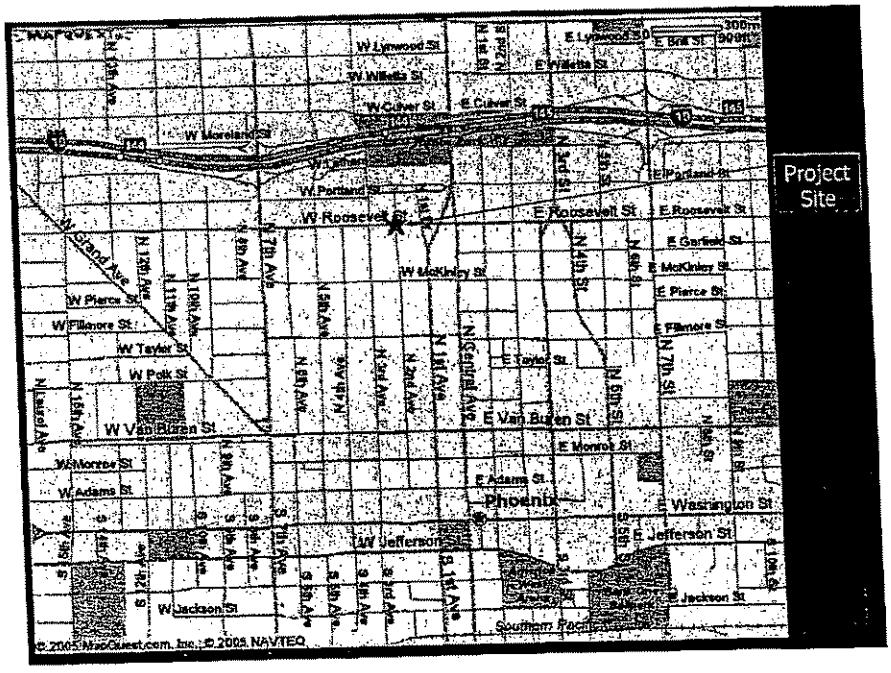
City of Phoenix: 1,421,298
Maricopa County: 3,194,798
State of Arizona: 5,307,331

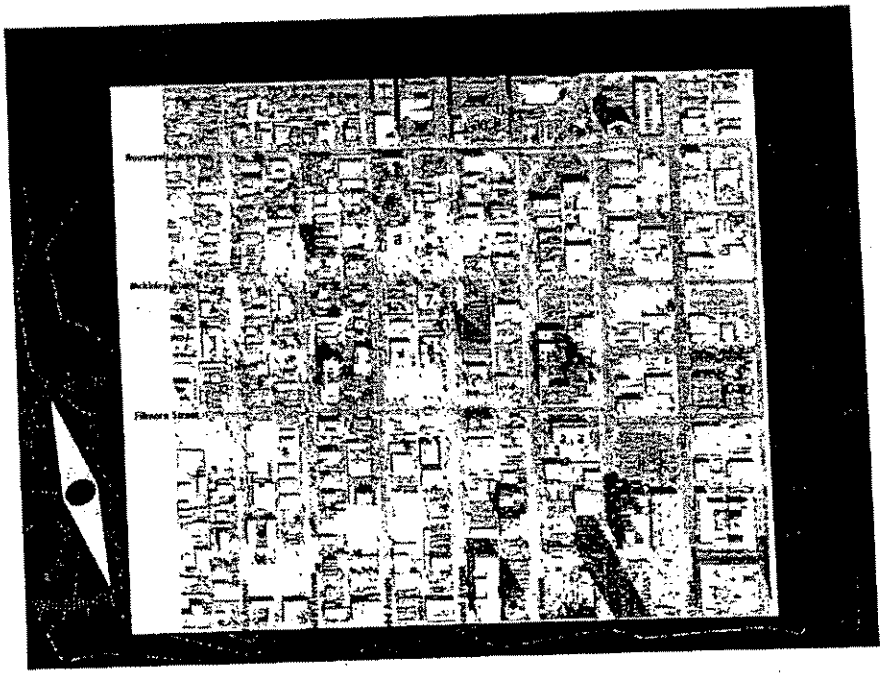
Phoenix covers more than 500 square miles and has a population of 1.4 million, ranking it the sixth largest city in the United States. A premier resort destination, Phoenix has more than 300 sun-filled days a year and an average temperature of 7[illegible] degrees.

More than 50 percent of the population is between 18 and 54 years of age, which is younger than the national average. The greater Phoenix area is a $50 billion marketplace driven by technology. World-leading companies such as Intel, Avnet, Motorola, AlliedSignal, Honeywell and Boeing Company have chosen Phoenix for their corporate and regional headquarters. Phoenix Sky Harbor International Airport is the fifth busiest airport in the U.S.

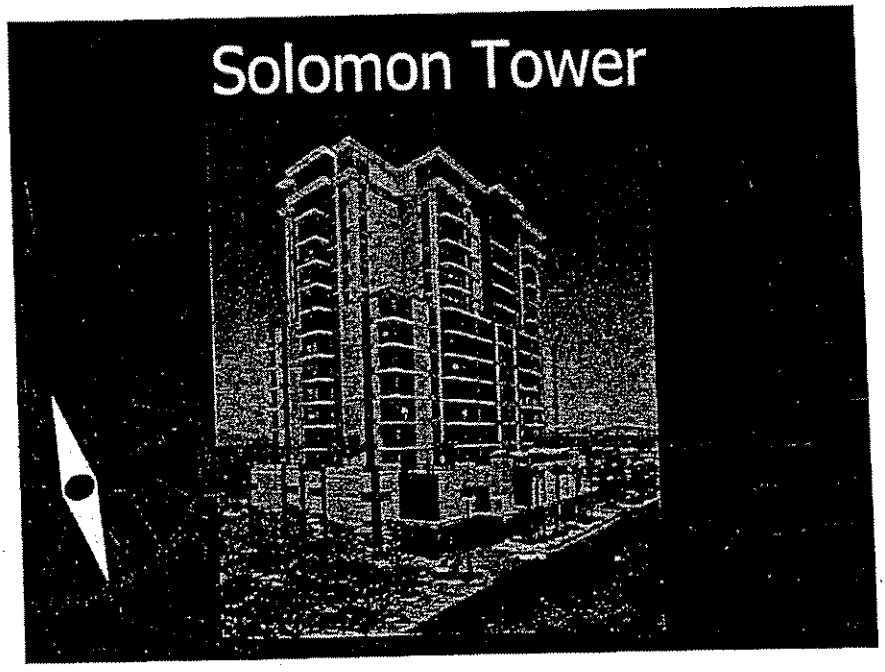


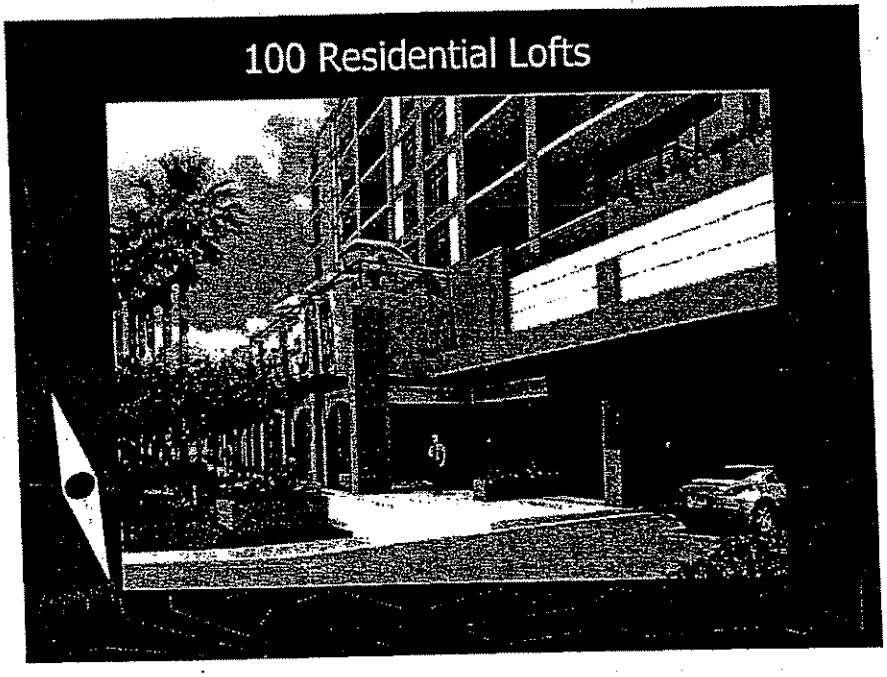

Downtown Phoenix
Downtown Phoenix and the central Copper Square are at the center of a reverse migration of citizens that want to live in metropolitan phoenix.
Recent Key Headlines and Events in Downtown Phoenix:
• Federal Transit Authority pledge $587 million for Phoenix Valley light rail
• City has goal of filling 137 acres of downtown vacant land by building 10,000 high density units and adding 10,000 downtown workers within 10 years
• ASU downtown plans
• 3-block wide biomedical research campus in the Evans-Churchill neighborhood
• move 1,500 College of Nursing students to downtown by 2006
• locate schools of Community Resources and Development, Public Affairs and Social Work to 210,000 sqft APS building (1,300 students)
• Downtown Phoenix Partnership announces plans to launch Wi-Fi in Copper Square area
• Downtown Phoenix Public Market grand opening is Feb 12, 2005

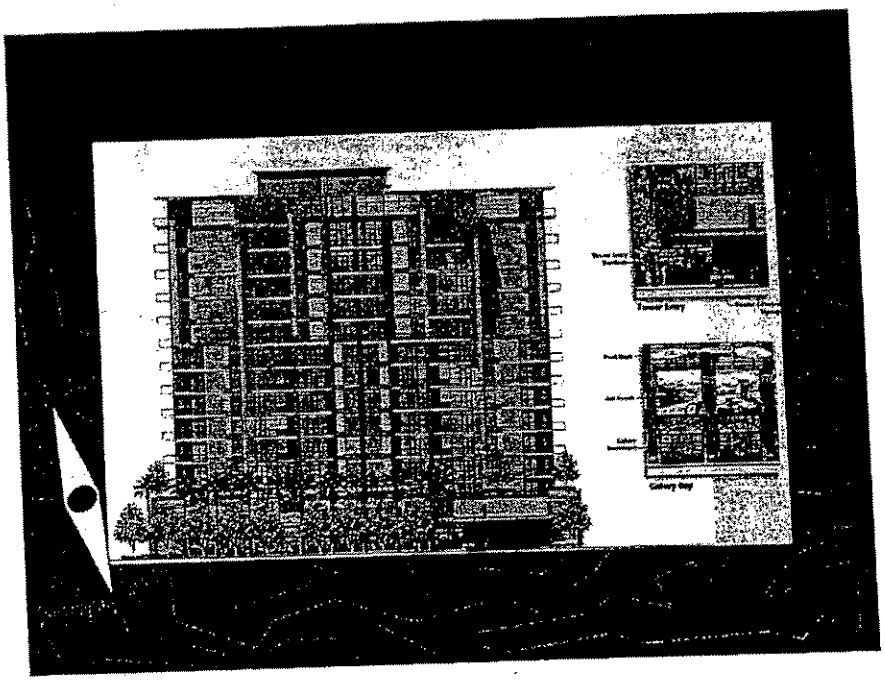

Project Site
W Roosevelt St
E Roosevelt St
W McKinley St
E McKinley St
W Van Buren St
E Van Buren St
Phoenix
E Washington St
E Jefferson St
W Jefferson St
W Jackson St
E Jackson St
N Central Ave
N 7th Ave
N 7th St
N 15th Ave
N 15th St
© 2005 MapQuest.com, Inc. | © 2005 NAVTEQ

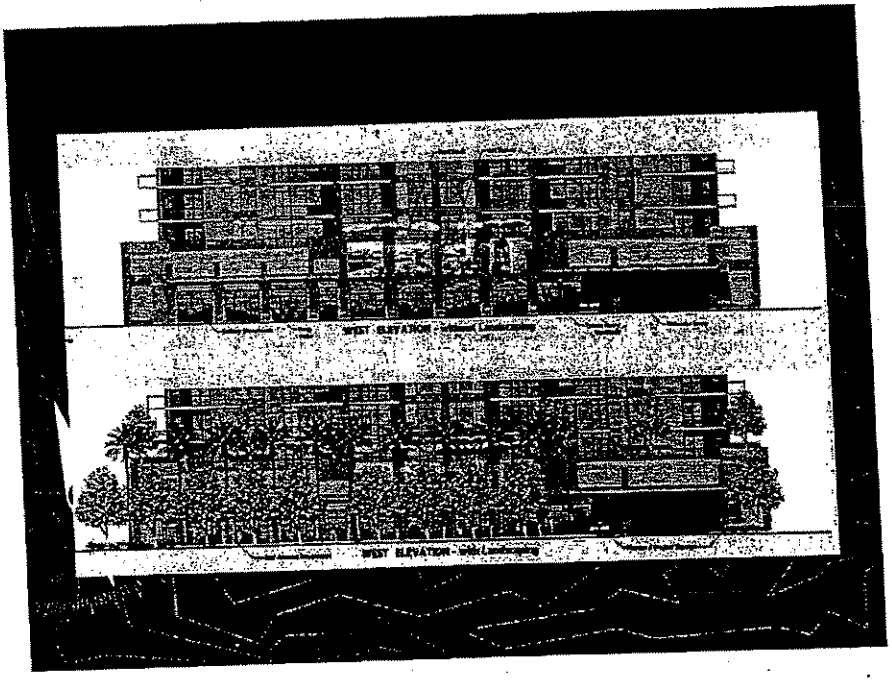


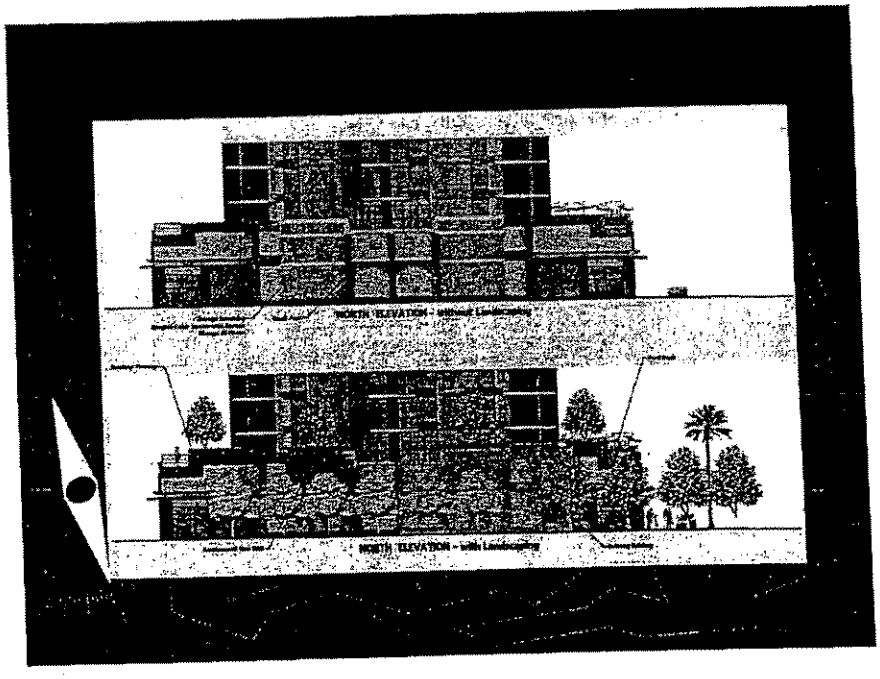

Introducing...


Solomon Tower


100 Residential Lofts







Project Overview

- 10 Story high-rise, residential loft development
- Mid range price point: $400 psf
- 100 Units Planned
- Estimated Project Timeframe: 36 months

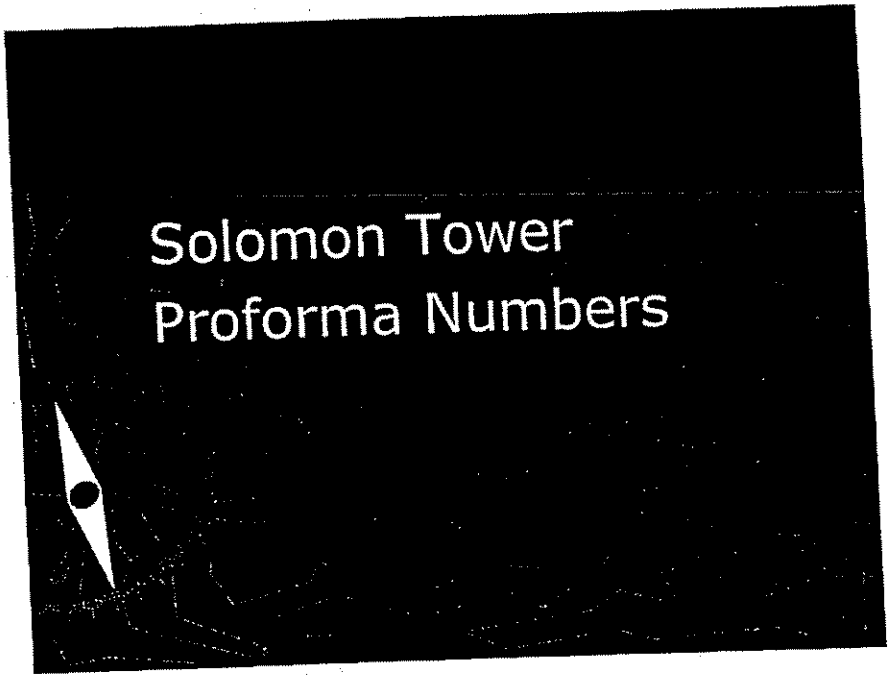
Project Advantages & Benefits

- Central downtown Phoenix locations takes advantage of reverse migration trend
- Highly congruent with City of Phoenix general plan

Comparative Sales Case: Monroe Towers

- Located 4 blocks south of our site
- Selling at $600 psf - $200 psf higher than the Solomon Tower proforma


Residential Loft Buyer Analysis
Our local sales team is in place and ready to market the development once it is released. The sales team expects buyers to be from the following categories:
20% established, single professionals
25% empty-nesters
20% second home buyers
10% starter families
25% other, including investors


Solomon Tower
Proforma Numbers

Development Proforma

Land Area	0.75 Acres
Land Cost psf	$ 153.05
Building Area	135,000 Gross Square Feet
Coverage	413%
Number of Units	100
Total Land Cost	$ 5,000,000
Closing Cost	10,000
Total Land Acquisition Cost	$ 5,010,000

Development Proforma – 10 Stories

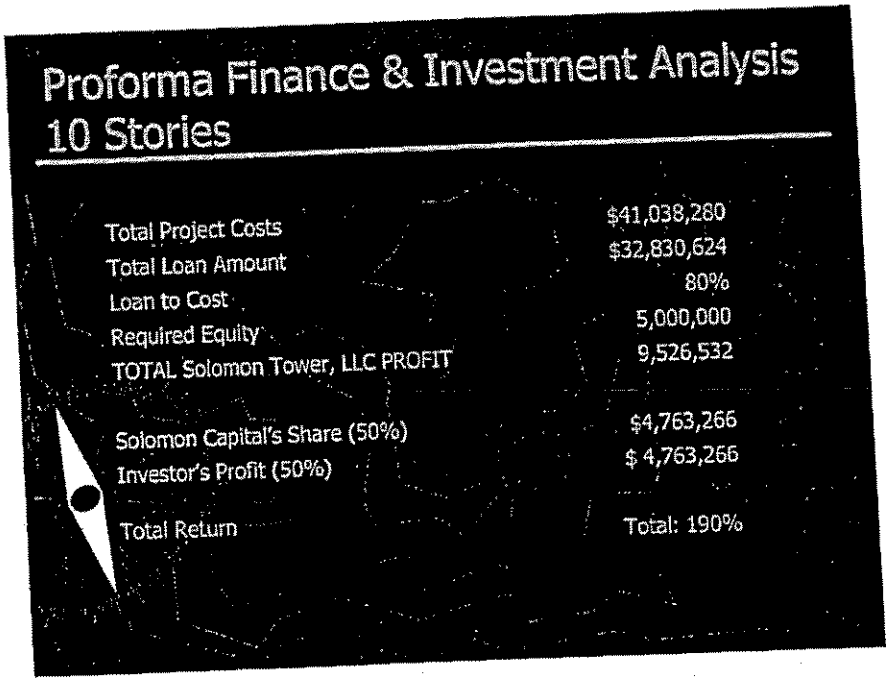
Construction Costs	$ 27,000,00
Permit Fees	250,000
Utility Connection Fees	250,000
Plan Review Fees	50,000
Construction Management	500,000
Architectural Design	1,400,000
Civil	50,000
Survey	25,000
Testing	50,000
Engineering	50,000
Signage	25,000
Legal Fees	65,000
Real Estate Taxes & Accounting	75,000

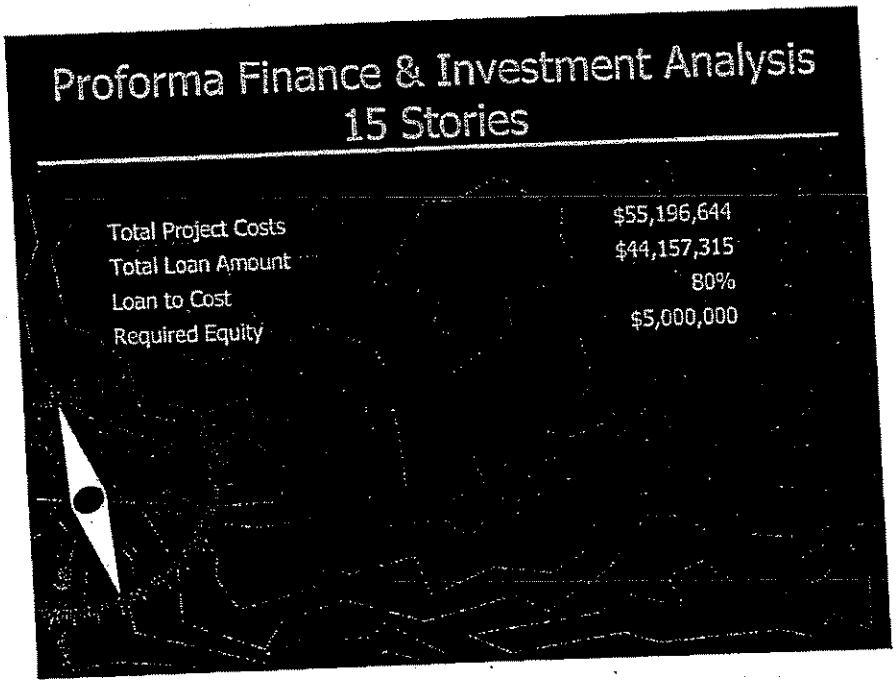
Development Proforma (cont.)

Insurance	900,000
Marketing	900,000
Design Center Fees	100,000
Furniture, Furnishings & Equipment	200,000
Site Maintenance	30,000
Developer Fee	1,000,000
Interest Carry	1,579,974
Construction Finance Fees	328,306
Miscellaneous	200,000
Contingency	1,000,000
TOTAL CONSTRUCTION COST	$ 36,028,280
TOTAL LAND COST	5,010,000
TOTAL PROJECT COST	$ 41,038,280

Sales Proforma – 10 Stories

Loft Sales	$54,225,000
Sales Commissions (6%)	-3,253,500
Closing Costs (0.75%)	-406,688
Net Revenue	$50,564,813


Proforma Finance & Investment Analysis
10 Stories
Total Project Costs
Total Loan Amount
Loan to Cost
Required Equity
TOTAL Solomon Tower, LLC PROFIT
Solomon Capital's Share (50%)
Investor's Profit (50%)
Total Return
$41,038,280
$32,830,624
80%
5,000,000
9,526,532
$4,763,266
$ 4,763,266
Total: 190%

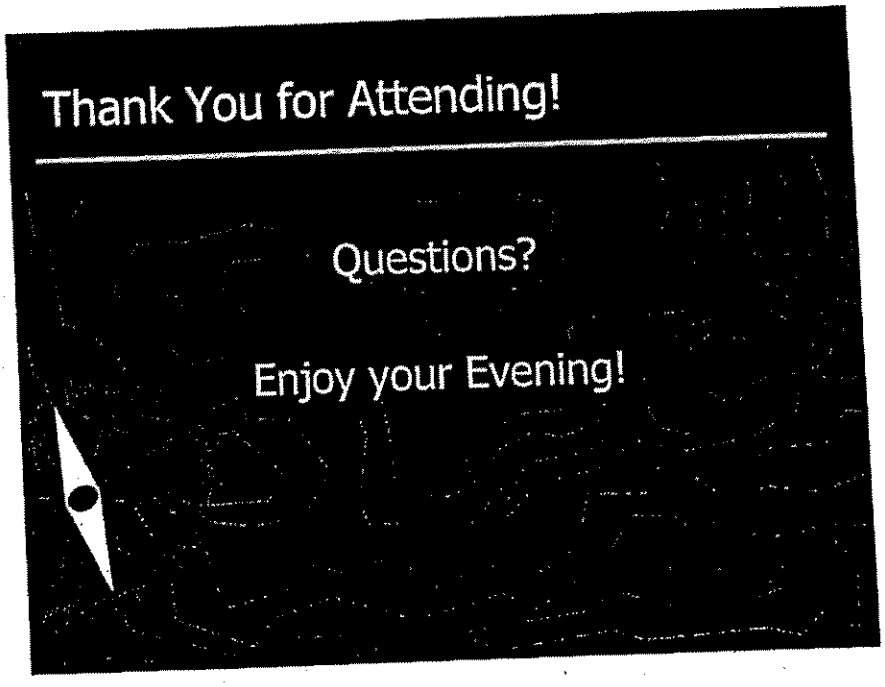

Proforma Finance & Investment Analysis
15 Stories
Total Project Costs
Total Loan Amount
Loan to Cost
Required Equity
$55,196,644
$44,157,315
80%
$5,000,000

Sales Proforma – 15 Stories

Loft Sales	$81,225,000
Sales Commissions (6%)	-4,873,500
Closing Costs (0.75%)	-609,188
Net Revenue	$75,742,313
Solomon Tower, LLC Profit	$20,545,669
Investors (50%)	$10,272,834
Solomon Capital (50%)	$10,272,834
Total Return	410%

Next Steps

1. Form Partnership and Raise Capital (3 weeks)
   a. Turn in your Commitment Form and signed Operating Agreement by Friday, Feb. 11th
   b. Initial Capital Contributions by Monday, Feb. 28th
2. Acquire Land (60 days)
3. Explore Project Definition (9-12 months)
4. Proceed with Build-out & Marketing (2 years)


Thank You for Attending!
Questions?
Enjoy your Evening!

Z Lofts
100 Lofts
1/14/2005

Development Budget

Land Area	0.75 acres	
Land Cost psf of Land Area	$ 153.05	
Building Area	135,000 s.f.	
Coverage	413%	
Number of Units	100 units	

		PSF	Per Unit
Land	5,000,000	$ 37.04	$ 50,000
Closing Costs	10,000	$ 0.07	$ 100
Total Land Costs	5,010,000	$ 37.11	$ 50,100
Construction Costs	27,000,000	$ 200.00	$ 270,000
Permit Fees	250,000	$ 1.85	$ 2,500
Utility Connection Fees	250,000	$ 1.85	$ 2,500
Plan Review Fees	50,000	$ 0.37	$ 500
Construction Mgt Fees	500,000	$ 3.70	$ 5,000
Architecture	1,400,000	$ 10.37	$ 14,000
Civil	50,000	$ 0.37	$ 500
Survey	25,000	$ 0.19	$ 250
Testing	50,000	$ 0.37	$ 500
Engineering	50,000	$ 0.37	$ 500
Design Center Fees	100,000	$ 0.74	$ 1,000
Furniture, Furnishings & Equipment	200,000	$ 1.48	$ 2,000
Signage	25,000	$ 0.19	$ 250
Legal	65,000	$ 0.48	$ 650
Real Estate Taxes	25,000	$ 0.19	$ 250
Insurance	900,000	$ 6.67	$ 9,000
Marketing	900,000	$ 6.67	$ 9,000
Site Maintenance	30,000	$ 0.22	$ 300
Developer Fee	1,000,000	$ 7.41	$ 10,000
Miscellaneous	200,000	$ 1.48	$ 2,000
Contingency	1,000,000	$ 7.41	$ 10,000
Accounting	50,000	$ 0.37	$ 500
Interest Reserve 5.500%	1,579,974	$ 11.70	$ 15,800
Financing Fees 1.00%	328,306	$ 2.43	$ 3,283
Total Construction Costs	36,028,280	$ 266.88	$ 360,283
Total Project Costs	41,038,280	$ 303.99	$ 410,383

Sales Summary

	Size	Quantity	$ psf			PSF	Per Unit
Unit A	1350	100	$ 400		54,000,000	$ 400.00	$ 540,000
Unit B	0	0	$ -		$ -	$ -	#DIV/0!
Unit C	0	0	$ -		$ -	$ -	#DIV/0!
Unit D	0	0	$ -		$ -	$ -	#DIV/0!
Lot Premiums		45	$ 5,000	per unit	$ 225,000	$ 1.67	$ 5,000
Gross Sales Proceeds					$ 54,225,000	$ 401.67	$ 1,205,000
Less:							
Sales Commission	6.00%				3,253,500	$ 24.10	$ 72,300
Closing Costs	0.75%				406,688	$ 3.01	$ 9,038
Net Sales Proceeds					$ 50,564,813	$ 374.55	$ 1,123,663

Equity Analysis

Total Project Costs		$ 41,038,280
Loan to Cost		80%
Loan Amount		$ 32,830,624
Cash Equity		$ 5,000,000
Project Profit		$ 9,526,532
Manager Profit	50%	$ 4,763,266
Investor Profit	50%	$ 4,763,266
Project Cash on Cash Return		191%
Investor Cash on Cash Return		95%

Z Lofts
150 Lofts
1/14/2005

Development Budget				
Land Area		0.75 acres		
Land Cost psf of Land Area	$	153.05		
Building Area		202,500 s.f.		
Coverage		620%		
Number of Units		100 units		
			PSF	Per Unit
Land		5,000,000	$ 24.69	$ 50,000
Closing Costs		10,000	$ 0.05	$ 100
Total Land Costs		5,010,000	$ 24.74	$ 50,100
Construction Costs		40,500,000	$ 200.00	$ 405,000
Permit Fees		250,000	$ 1.23	$ 2,500
Utility Connection Fees		250,000	$ 1.23	$ 2,500
Plan Review Fees		50,000	$ 0.25	$ 500
Construction Mgt Fees		500,000	$ 2.47	$ 5,000
Architecture		1,400,000	$ 6.91	$ 14,000
Civil		50,000	$ 0.25	$ 500
Survey		25,000	$ 0.12	$ 250
Testing		50,000	$ 0.25	$ 500
Engineering		50,000	$ 0.25	$ 500
Design Center Fees		100,000	$ 0.49	$ 1,000
Furniture, Furnishings & Equipment		200,000	$ 0.99	$ 2,000
Signage		25,000	$ 0.12	$ 250
Legal		65,000	$ 0.32	$ 650
Real Estate Taxes		25,000	$ 0.12	$ 250
Insurance		900,000	$ 4.44	$ 9,000
Marketing		900,000	$ 4.44	$ 9,000
Site Maintenance		30,000	$ 0.15	$ 300
Developer Fee		1,000,000	$ 4.94	$ 10,000
Miscellaneous		200,000	$ 0.99	$ 2,000
Contingency		1,000,000	$ 4.94	$ 10,000
Acounting		50,000	$ 0.25	$ 500
Interest Reserve	5.500%	2,125,071	$ 10.49	$ 21,251
Financing Fees	1.00%	441,573	$ 2.18	$ 4,416
Total Construction Costs		50,186,644	$ 247.84	$ 501,866
Total Project Costs		55,196,644	$ 272.58	$ 551,966

Sales Summary

	Size	Quantity	$ psf			PSF	Per Unit
Unit A	1350	150	$ 400		81,000,000	$ 400.00	$ 540,000
Unit B	0	0	$ -		$ -	$ -	#DIV/0!
Unit C	0	0	$ -		$ -	$ -	#DIV/0!
Unit D	0	0	$ -		$ -	$ -	#DIV/0!
Lot Premiums		45	$ 5,000	per unit	$ 225,000	$ 1.11	$ 5,000
Gross Sales Proceeds					$ 81,225,000	$ 401.11	$ 1,805,000
Less:							
Sales Commission		6.00%			4,873,500	$ 24.07	$ 108,300
Closing Costs		0.75%			609,188	$ 3.01	$ 13,538
Net Sales Proceeds					$ 75,742,313	$ 374.04	$ 1,683,163

Equity Analysis

Total Project Costs		$ 55,196,644
Loan to Cost		80%
Loan Amount		$ 44,157,315
Cash Equity		$ 5,000,000
Project Profit		$ 20,545,669
Manager Profit	50%	$ 10,272,834
Investor Profit	50%	$ 10,272,834
Project Cash on Cash Return		411%
Investor Cash on Cash Return		205%

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement"), is made and entered into as of February 5th, 2005, by and among those Persons who are identified as Members in Exhibit A to this Agreement (each individually a "Member" and, collectively, the "Initial Members"), and Solomon Towers, LLC, a Nevada limited-liability company (the "Company").

For the consideration of their mutual covenants set forth below, the Members and the Company agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Act" means the Nevada Limited Liability Company Act, N.R.S. § 86.011 *et seq*, as amended from time to time.

"Additional Capital Contributions" means the additional contributions to the capital of the Company described in Section 3.2.

"Agreement" means this written limited liability company agreement, as originally executed and as amended or restated from time to time.

"Assignee" means a Person who acquires an Interest in the Company but who has not been admitted as a Substitute Member.

"Capital Account" means as defined in Section A.1 of Appendix 1.

"Capital Contribution" means any contribution to the capital of the Company whenever made.

"Code" means the Internal Revenue Code of 1986, as amended from time to time. All references herein to sections of the Code shall include any corresponding provision on provisions of succeeding law.

"Covered Person" means a Member, the Manager, or any Person that directly or indirectly controls or is controlled by the Company.

"Gross Asset Value" means as defined in Section A.1 of Appendix 1.

"Interest" in the Company shall mean the economic rights of a Member and their permitted assignees and successors to share in distributions of cash and other property from the Company pursuant to the Act and this Agreement, together with their distributive share of the Company's net income or loss for federal and state income taxes.

"Losses" has the meaning as set forth in Section A.1 of Appendix 1.

"Majority in Interest" means those Members owning, in aggregate, greater than fifty percent (50.0%) of the Interests in the Company.

"Manager" means Ron Buchholz or Charice Buchholz or any other Person who becomes a Manager pursuant to this Agreement. Except as otherwise provided in this Agreement, if more than one, each Manager shall have all of the powers and authority exercisable by a Manager pursuant to the Act and this Agreement.

"Member" means (a) the Initial Members until such time, if any, that any such Person becomes a Withdrawn Member, (b) any Person acquiring an Interest directly from the Company in accordance with this Agreement until such time, if any, that any such Person becomes a Withdrawn Member, and (c) any Person who acquires an Interest in the Company in a Permitted Transfer and who is deemed, or is admitted as, a Substitute Member until such time, if any, that such Person becomes a Withdrawn Member.

"Net Cash Flow" means, with respect to any period, the Company's gross receipts, reduced by the portion thereof used to pay or establish reserves for all Company expenses, debt payments and accrued interest, contingencies, and proposed acquisitions, all as determined in the sole discretion of the Manager. "Net Cash Flow" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances.

"Percentage Interest" means the percentage interests in the Profits and Losses of this Company. The initial Percentage Interests are set forth on Exhibit A.

"Permitted Transfer" has the meaning set forth in Section 11.2.

"Person" means any individual, firm, corporation, partnership, limited liability company, association or other legal entity.

"Profits" has the meaning set forth in Section A.1 of Appendix 1.

"Substitute Member" means a Person who acquires an Interest from a Member and who satisfies all of the conditions of Section 11.5.

"Super-Majority in Interest" means those Members owning, in aggregate, greater than seventy-five percent (75.0%) of the Interests in the Company.

"TMP" means the Person designated in accordance with Section 9.2(b).

"Transfer" means, when used as a noun, any voluntary or involuntary sale, assignment, gift, transfer, or other disposition and, when used as a verb, means voluntarily or involuntarily to sell, assign, gift, transfer, or otherwise dispose of.

"Treasury Regulations" means the Regulations issued by the Treasury Department under the Code.

"Withdrawal Event" means with respect to a specified Person the death, retirement, resignation, expulsion, bankruptcy, or dissolution of such Person.

"Withdrawn Member" means a Member following the occurrence of a Withdrawal Event with respect to such Member.

ARTICLE II

FORMATION OF THE LIMITED LIABILITY COMPANY

2.1 General. The Initial Members organized the Company as a manager-managed limited-liability company in accordance with the Act and the terms of this Agreement by filing the Articles of Organization with the Nevada Secretary of State on _____ __, 2005.

2.2 Name. The name of the Company is "Solomon Towers, LLC" and the business of the Company shall be carried on in this name with such variations and changes as a Manager in its sole discretion may deem necessary or appropriate to comply with requirements of the jurisdictions in which the Company's operations shall be conducted.

2.3 Purposes and Powers. The Company may engage in and do any act concerning any or all lawful businesses for which limited liability companies may be organized under Nevada law. The Company shall have all of the powers permitted by law. The initial purpose of the Company shall be to acquire real property and the development of a high rise residential tower or towers in downtown Phoenix, Arizona

2.4 Registered Office. The registered office shall be the office maintained at the street address of the resident agent.

2.5 Term. The term of the Company commenced on the filing of the Articles of Organization for the Company and shall not expire except in accordance with the provisions of Article XII of this Agreement or in accordance with the Act.

ARTICLE III

CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. The Initial Members of the Company shall each contribute to the capital of the Company the contributions described in Exhibit A. Capital Contributions to the Company may consist of cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

3.2 Additional Capital Contributions. The Members shall be required to make Additional Capital Contributions only in the amount(s) and at the time(s) that the Manager, in its sole discretion, shall deem necessary for the conduct of the business of the Company. The first additional capital contributions shall be as described in Exhibit A and shall be made by the Initial Members within ten (10) business days of receipt of notice regarding same from the Manager.

"Withdrawal Event" means with respect to a specified Person the death, retirement, resignation, expulsion, bankruptcy, or dissolution of such Person.

"Withdrawn Member" means a Member following the occurrence of a Withdrawal Event with respect to such Member.

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3.2 Additional Capital Contributions. The Members shall be required to make Additional Capital Contributions only in the amount(s) and at the time(s) that the Manager, in its sole discretion, shall deem necessary for the conduct of the business of the Company. The first additional capital contributions shall be as described in Exhibit A and shall be made by the Initial Members within ten (10) business days of receipt of notice regarding same from the Manager.

3.3 Use of Capital Contributions. All Capital Contributions shall be expended in furtherance of the business of the Company. Capital Contributions shall not be commingled with the funds of any other Person or entity, except that the funds may be deposited in an account in the name of the Company in a bank or other financial institution as the Manager deems appropriate.

3.4 No Interest on Capital Contributions. No interest shall accrue on any Capital Contributions made to the Company.

3.5 No Unauthorized Withdrawals of Capital Contributions. No Member shall have the right to withdraw or to be repaid any of such Member's Capital Contributions so made, except as specifically provided in this Agreement.

3.6 Return of Capital. Except as otherwise provided in this Agreement, no Member shall be entitled to the return of the Member's Capital Contributions to the Company. Further, it is expressly provided that the Manager shall have no personal liability for the repayment of the Capital Contributions made by any Member, it being agreed that any return of capital or Profits made pursuant to this Agreement shall be made solely from the assets of the Company.

ARTICLE IV

MANAGEMENT

4.1 Management by Manager - General. The business and affairs of the Company shall be managed by its designated Manager or Managers. Other than those rights and powers expressly reserved to Members by this Agreement, the Manager shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions as the Manager deems necessary or expedient to accomplish the purposes of the Company. The Manager shall act in good faith and in a manner that the Manager reasonably believes to be in the best interests of the Company and its Members.

4.2 Delegation of Powers and Responsibilities. The Manager shall be authorized to delegate such powers and responsibilities as it may deem appropriate for the efficient operation of the business of the Company.

4.3 Management Powers and Responsibilities. Without limiting the generality of Section 4.1, but subject to the provisions of Section 4.4 and any other provision in this Agreement, the Manager shall have power and authority, on behalf of the Company:

(a) To open accounts in the name of the Company with banks and other financial institutions and designate and remove from time to time, at the discretion of the Manager, all signatories on such bank accounts;

(b) To purchase policies of comprehensive general liability insurance and to purchase such other insurance coverage as the Manager shall determine to be necessary or desirable to insure the Members or to protect the Company's assets;

(c) To execute on behalf of the Company all instruments and documents including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, and any other instruments or documents necessary, in the opinion of the Manager, to the conduct of the business of the Company;

(d) To employ accountants, legal counsel, managing agents, other experts, and independent contractors to perform services for the Company and to compensate them from Company funds;

(e) Subject to Section 10.1, to admit new Members to the Company;

(f) As otherwise provided in this Agreement, to borrow money from banks, other lending institutions, or the Members, on such terms as the Manager deems appropriate, and in connection therewith to encumber and grant security interests in the assets of the Company to secure payments of the borrowed sum;

(g) Except as otherwise provided in this Agreement, to pay or cause to be paid incentive compensation to any Member or the Manager, including, without limitation, incentive compensation in the form of revenues derived by the Company, bonuses and profit sharing;

(h) To acquire by purchase, lease, or otherwise, any real or personal tangible property;

(i) To acquire by purchase, lease, or otherwise, any intangible property;

(j) To prepay, refinance, increase, modify, or extend any liabilities of the Company and in connection therewith execute any extensions or renewals of encumbrances on any or all of the property or assets of the Company;

(k) To comply with, or cause to be complied with, all provisions of the Act governing the administration of a limited liability company, including, but not limited to, filing with the Nevada Secretary of State any required and necessary amended Articles of Organization; and

(l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

4.4 Certain Actions Requiring the Consent of the Members. Notwithstanding any other provisions of this Agreement relating to the authority of the Manager, the following actions shall require the prior written consent of a Super-Majority in Interest:

(a) Subject to Section 13.3, to amend this Agreement;

(b) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan;

(c) To enter into any joint venture investment with any other Person;

(d) To merge the Company with or to consolidate the Company with any other entity, or otherwise cause the Company to participate in any reorganization with any other entity;

(e) To name additional managers of the Company;

(f) To dissolve the Company as set forth in Section 12.1(a); and

(g) To file a voluntary petition in bankruptcy, or appoint a receiver for the Company.

4.5 Affirmative Manager Responsibilities. Notwithstanding any other provision(s) in this Agreement, the Manager shall be required to perform or cause to be performed the following functions:

(a) Maintain adequate records and books of accounts;

(b) Maintain sufficient insurance customary to the operations carried on by the Company;

(c) Comply with all applicable laws and obtain all permits necessary to conduct the Company's business; and

(d) Comply with the terms of all material agreements entered into by the Company.

4.6 Prohibited Acts. Neither the Manager nor any other officer or agent of the Company shall have authority to do any of the following acts on behalf of the Company:

(a) Possess property of the Company, or assign rights in property of the Company for other than a purpose of the Company;

(b) Commingle the funds of the Company with those of any other Person;

(c) Knowingly perform any act that contravenes the provisions of this Agreement;

(d) Knowingly take any action that is inconsistent with achieving the purposes of the Company, except as otherwise provided in this Agreement;

(e) Knowingly perform any act that would subject any Member to personal liability commensurate with that of a general partner of a general partnership; or

(f) Possess property of the Company, or assign rights in property of the Company for other than a purpose of the Company.

4.7 Reliance Upon Actions by the Manager. Any Person dealing with the Company may rely without any duty of inquiry upon any action taken by the Manager on behalf of the Company. Any and all deeds, bills of sale, assignments, mortgages, deeds of trust, security agreements, promissory notes, or other contracts or instruments executed by the Manager on behalf of the Company shall be binding upon the Company, and all of the Members agree that a copy of this provision may be shown to the appropriate parties in order to confirm the same. Without limiting the generality of the foregoing, any Person dealing with the Company may rely upon a certificate or written statement signed by a Manager as to:

(a) The identity of the Manager or any Member;

(b) The existence or nonexistence of any fact or facts that constitute a condition precedent to acts by the Manager or that are in any other manner germane to the affairs of the Company;

(c) The Persons who are authorized to execute and deliver any instrument or documents on behalf of the Company; or

(d) Any act or failure to act by the Company on any other matter whatsoever involving the Company, or any Member.

4.8 Initial Managers, Number, Tenure, and Qualifications. The initial Managers shall be Ron Buchholz and Charice Buchholz. The initial Managers shall hold office until the earlier of their respective death, resignation, or removal. If a Manager dies, resigns or is removed from office, any replacement Manager shall be determined by a Majority in Interest. The Manager shall not be required to be a resident of the State of Nevada, nor be a Member of the Company.

4.9 Resignation. A Manager may resign at any time by delivering written notice to all of the Members. The resignation of the Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not affect the Manager's rights and liabilities as a Member, if applicable.

4.10 Removal. A Manager may be removed from office with or without cause by the unanimous written consent of all the Members.

4.11 Vacancies. Any vacancy occurring for any reason in the office of Manager may be filled by the affirmative vote of a Majority in Interest.

4.12 Independent Activities. Neither this Agreement nor any obligation undertaken pursuant hereto shall prevent the Managers from engaging in any activities that they choose, or require the Managers to permit the Company or any Member to participate in such activities. The foregoing shall also apply with respect to the activities of any officer, employee, or agent of the Company except to the extent prescribed by the Manager.

4.13 Salary and Expenses. The Manager may receive reasonable compensation for services rendered in its capacity as Manager as determined by the consent of a Majority of the Members. The Manager and Members shall be entitled to have the Company pay, or be

reimbursed by the Company for, reasonable and necessary out-of-pocket expenses incurred on behalf of the Company and approved by the Manager.

ARTICLE V

DISTRIBUTIONS TO MEMBERS

5.1 Distributions of Net Cash Flow. Prior to the dissolution of the Company and the commencement of the liquidation of its assets and winding up of its affairs, the Manager may in its sole discretion, distribute from time to time the Net Cash Flow to the Members pro rata in accordance with their respective Percentage Interests.

5.2 Distributions in Liquidation. Following the dissolution of the Company and the commencement of winding up and the liquidation of its assets, distributions to the Members shall be governed by Section 12.2.

5.3 Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member for all purposes of this Agreement.

5.4 State Law Limitation on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Manager shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or other applicable law.

ARTICLE VI

ALLOCATION OF PROFITS AND LOSSES

6.1 Allocation of Profits and Losses. After making any special allocations required under Appendix 1, the Profits and Losses of the Company (and each item of income, gain, loss, and deduction entering into the computation thereof) for each year, shall be allocated among the Members pro rata in accordance with their respective Percentage Interests.

6.2 Tax Allocations. All items of income, gain, loss, deduction and credit of the Company for any tax period shall be allocated among the Members in accordance with the allocations of Profits and Losses prescribed in this Article VI and Appendix 1.

6.3 Allocation in Respect to Transferred Interest. If a Member's Interest is conveyed in a Permitted Transfer during any year, allocations of Profits and Losses and items of income, gain, loss, and deduction with respect to such Interest shall be allocated between the transferor and the transferee by taking into account their varying interests in such Interest during the year as though the Company's books were closed on the date of the Permitted Transfer.

ARTICLE VII

LIABILITIES, RIGHTS AND OBLIGATIONS OF MEMBERS

7.1 Limitation of Liability. Each Member's liability for the debts and obligations of the Company shall be limited as set forth in the Act and other applicable law. The provisions of this Section 7.1 shall not be deemed to limit in any way the liabilities of any Member to the Company and to the other Members arising from a breach of this Agreement, including any breach of the representations set forth in Section 13.10.

7.2 Access to Company Records. Upon the written request of any Member, the Manager shall permit such Member, at a reasonable time to both the Manager and the Member, to inspect and copy, at the Member's expense, the Company records required to be maintained pursuant to Section 9.1.

7.3 Priority And Return of Capital. No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses, or distributions; provided, however, that this Section 7.3 shall not apply to repayment of any loans (as distinguished from Capital Contributions) that a Member may make to the Company, if applicable.

7.4 Authority to Bind the Company, Management Authority. Unless authorized to do so by this Agreement or otherwise by the Manager in writing, no Member shall have any power or authority to bind the Company in any way, to pledge the Company's credit, to render the Company liable for any purpose, or to otherwise engage in the management of the Company. It is expressly provided herein that for the purposes of this Section 7.4 and any other provision of this Agreement, unless the context indicates to the contrary, the term "Member" includes any individual Member or group of Members.

7.5 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to property of the Company.

7.6 Cooperation With Tax Matters Partner. Each Member agrees to cooperate with the TMP and to do or refrain from doing any or all things reasonably required by the TMP in connection with the conduct of any proceedings involving the TMP.

7.7 Voting Rights. The Members shall have the right to vote on the matters specifically reserved for their approval or consent set forth in this Agreement.

7.8 Meetings of Members. The Manager shall convene a meeting of the Members upon the request of a Majority in Interest of the Members or a Manager. Such meeting shall be held not later than ten (10) days following request therefor. Any meeting of Members shall be held at the registered office of the Company or at such other place as all of the Members shall unanimously agree. Any Member may participate in any meeting of Members by means of a conference telephone or similar communication equipment.

ARTICLE VIII

LIABILITY, EXCULPATION AND INDEMNIFICATION

8.1 Liability. Except as otherwise provided by the Act or pursuant to any agreement, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

8.2 Exculpation. No Covered Person shall be liable to the Company or any Member for any act or omission taken or suffered by such Covered Person in good faith and in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority granted to such Covered Person by this Agreement; provided, however, that Covered Persons shall remain liable to the Company for acts in breach of this Agreement, breach of any fiduciary duty owed to the Company and for gross negligence and willful misconduct in connection with matters relating to the Company.

8.3 Indemnification.

(a) The Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and release each Covered Person from and against all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, that may accrue to or be incurred by any Covered Person as a result of the Covered Person's activities associated with the Company; provided, however, that the benefits of this Section 8.3(a) shall not extend to acts in breach of this Agreement, breach of any fiduciary duty owed to the Company and for gross negligence and willful misconduct in connection with matters relating to the Company.

(b) Members shall not be required directly to indemnify any Covered Person.

ARTICLE IX

BOOKS AND RECORDS, REPORTS, TAX ACCOUNTING, BANKING

9.1 Books and Records. The Manager, at the expense of the Company, shall keep or cause to be kept adequate books and records for the Company that contain an accurate account of all business transactions arising out of and in connection with the conduct of the Company required by the Act. Additionally, at the expense of the Company, the Manager shall maintain or cause to be maintained the following records:

(a) A list of the full name and last known business, residence, or mailing address of each Member, both past and present;

(b) A copy of the Articles of Organization for the Company, and all amendments thereto;

(c) Copies of the Company's currently effective Agreement and all amendments thereto, copies of any prior Agreements no longer in effect, and copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property, or services;

(d) Copies of the Company's federal, state, and local income tax returns and reports for the six (6) most recent years;

(e) Copies of financial statements of the Company, if any, for the six most recent years;

(f) Minutes of every meeting of the Members;

(g) Any written consents or approvals obtained from Members for actions taken by the Manager; and

(h) Any written consents or approvals obtained from Members for actions taken by Members without a meeting.

Any Member or its designated representative shall have the right, at any reasonable time, to have access to and may inspect and copy the contents of such books or records.

9.2 Tax Matters.

(a) The Members intend that the Company shall be operated in a manner consistent with its treatment as a partnership for federal and state income tax purposes. The Members agree not to take any action inconsistent with this expressed intent. Specifically, it is expressly provided that the TMP shall take no action to cause the Company to elect to be taxed as a corporation pursuant to Regulations Section 301.7701-3(a) or any counterpart under state law. It is further expressly provided that each Member agrees not to make any election for the Company to be excluded from the application of the provisions of Subchapter K of the Code.

(b) Charice Buchholz is hereby designated as the tax matters partner as defined in Section 6231 of the Code (the "TMP") of the Company and shall be authorized and required to represent the Company in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the TMP and to do or refrain from doing any or all things reasonably required by the TMP to conduct such proceedings. The TMP shall serve as TMP of the Company until he dies (if an individual) or it dissolves (if an entity) or resigns as TMP. Any successor TMP shall be selected by a Majority in Interest of the Members.

9.3 Bank Accounts. All funds of the Company shall be deposited in the name of the Company in an account or accounts maintained with such bank or banks selected by the Manager. The funds of the Company shall not be commingled with the funds of any other Person. Checks shall be drawn upon the Company account or accounts only for the purposes of the Company and shall be signed by authorized Persons on behalf of the Company.

ARTICLE X

ADMISSIONS AND WITHDRAWALS

10.1 Admission of Member. No additional Persons shall be admitted as a Member of the Company as a result of the issuance of additional Interests after the date of formation of the Company without the consent of a Majority in Interest of the Members and unanimous consent of the Managers. Additionally, no Person shall be admitted as a Member of the Company after the date of formation of the Company as a result of a Transfer of a Member's Interest(s) except in accordance with Section 11.5.

10.2 Right to Withdraw. A Member may withdraw from the Company at any time by mailing or delivering a written notice of withdrawal to the Manager. If the withdrawing Member is the Manager, such Member may withdraw by mailing or delivering a written notice of withdrawal to the Company and to the other Members at their last known addresses set forth in Exhibit A.

10.3 Rights of Withdrawn Member. Upon the occurrence of a Withdrawal Event with respect to a Member, the Withdrawn Member (or the Withdrawn Member's personal representative or other successor if applicable) shall cease to participate in management of the Company or to have any rights of a Member except only the right to receive distributions occurring at the times and equal in amounts to those distributions the Withdrawn Member would otherwise have received if a Withdrawal Event had not occurred; provided, however, that in the event of a Withdrawal Event that entails the death of a Member, the personal representative or other successor, or successors of such Person shall be admitted as a Member or as Members of the Company immediately following the death of such Person with the identical rights and obligations as a Member possessed by such Person immediately preceding such Person's death. The preceding sentence shall also apply in the event of the death of any personal representative or successor who succeeds to an interest as a Member of the Company upon the death of any such Person. If in any case there are no remaining Members, distributions to any Withdrawn Member shall be governed by Section 12.2.

ARTICLE XI

RESTRICTIONS ON TRANSFERABILITY

11.1 General. No Member shall be authorized to transfer all or a portion of their Interest unless the Transfer constitutes a Permitted Transfer.

11.2 Permitted Transfers. Subject to the conditions and restrictions set forth in Section 11.3, a Transfer of a Member's Interest shall constitute a Permitted Transfer provided that:

(a) The Transfer is made to another Member; or

(b) The Transfer is made following compliance with the terms of the right-of-first refusal set forth in Section 11.4.

11.3 Conditions To Permitted Transfer. A Transfer shall not be treated as a Permitted Transfer unless the following conditions are satisfied:

(a) The transferor and the transferee reimburse the Company for all costs that the Company incurs in connection with such Transfer; and

(b) The transferor and the transferee agree to execute such documents and instruments necessary or appropriate in the discretion of the Manager to confirm such Transfer.

It is expressly provided herein that the transferee of an Interest in a Permitted Transfer under Sections 11.2(a) and (b) shall automatically become a Substitute Member unless the transferor determines to the contrary. If the transferee of an Interest in a Permitted Transfer shall not become a Substitute Member, the transferee shall have only the rights set forth in Section 11.6 hereof.

11.4 Right of First Refusal.

(a) General. If any Member desires to Transfer all or a portion of the Member's Interest to any Person who is not a Member and the Transfer is not described in Section 11.2(a) or (b), such Transfer shall not constitute a Permitted Transfer unless such Member shall afford the Company and the other Members a right-of-first refusal pursuant to this Section 11.4.

(b) Notice. Before Transferring their Interest, a Member must first provide to the Company and the other Members at least seventy-five (75) days ("Notice Period") prior written notice of their intention to Transfer any part or all of their Interest (the "Disposition Notice"). The Member proposing to dispose of all or part of his, her or its Interest shall be known as the "Disposing Member" and the other Members shall be known as the "Non-Disposing Members" for purposes of this Agreement. In the Disposition Notice, the Disposing Member shall specify the price at which the Interest is proposed to be sold or transferred ("Offering Price"), which may not consist of consideration other than cash and/or promissory notes, the portion of their Interest to be sold or transferred, the identity of the proposed purchaser or transferee, and the terms and conditions of the proposed transaction.

(c) Option to Company. The Manager may elect, on behalf of the Company, within fifteen (15) days after receiving the Disposition Notice, to purchase the Interest proposed to be disposed of by the Disposing Member at the Offering Price. The terms and conditions of the purchase by the Company shall be the terms and conditions of the proposed transaction, as set forth in the Disposition Notice.

(d) Options to Members. If the entire Interest covered by the Disposition Notice is not purchased by the Company, the remaining Interest may be purchased by the Non-Disposing Members on the same terms and at the same price available to the Company. Each Non-Disposing Member shall have the option to purchase that portion of the Disposing Member's Interest that is necessary to maintain their Percentage Interest vis-a-vis the other Non-Disposing Members. If any Non-Disposing Member does not purchase the portion of the Interest available to them, the remaining Interest will then be available for purchase by the other Non-Disposing Members in proportion to their Percentage Interests.

(e) Timing. If the Company decides to purchase less than all of the Interest offered by the Disposing Member, within fifteen (15) days after the Company reaches such decision, and, in any event, at the expiration of the first thirty (30) days of the Notice Period specified in Section 11.4(b), the Company shall so notify each Non-Disposing Member. The notice shall state that the Company did not exercise its option to purchase with respect to the entire Interest offered pursuant to the Disposition Notice and shall contain appropriate information concerning the Non-Disposing Members' options to purchase all or any part of the remaining Interest offered by the Disposing Member. Each Non-Disposing Member must give written notice to the Disposing Member and the other Non-Disposing Members of the exercise of their option to acquire their pro rata portion of such Interest within the first forty-five (45) days of the Notice Period. If any Non-Disposing Member does not elect to purchase all of the portion of the Interest available to them, the remaining Non-Disposing Members shall be entitled to purchase such Interest in accordance with subparagraph (d) by giving written notice to the Disposing Member and the other Non-Disposing Members within the first sixty (60) days of the Notice Period.

(f) Condition to Electing Option. The options set forth in Sections 11.4(c) and 11.4(d) shall be subject to the condition that in no event shall less than one hundred percent (100%) of the Interest proposed to be disposed of by the Disposing Member be purchased in the aggregate by the Company and the Non-Disposing Members.

(g) Transfer to Third Party. If neither the Company nor the Non-Disposing Members shall have purchased the entire Interest covered by the Disposition Notice as provided in the foregoing subsections of this Section 11.4 within the first sixty (60) days of the notice period, the Disposing Member may sell to Persons other than the Company and the Non-Disposing Members, provided that any disposition must be made on the terms and conditions and to the party specified in the Disposition Notice and must be consummated within the Notice Period. After the termination of the Notice Period, the restrictions of this Article 11.4 shall apply again.

11.5 Admission of Substitute Member.

(a) Except as otherwise provided in paragraph (b) of this Section 11.5, a transferee of an Interest who is not a Member shall be admitted to the Company as a Substitute Member only upon satisfaction of the following conditions:

(i) The Interest with respect to which the transferee is being admitted was acquired by means of a Permitted Transfer;

(ii) The transferee becomes a party to this Agreement and executes such documents and instruments as the Members determine are necessary or appropriate to confirm such transferee as a Member and such transferee's agreement to be bound by the terms of this Agreement;

(iii) The transferee provides the Company with evidence satisfactory to counsel for the Company that such transferee has made each of the representations and covenants set forth in Section 13.10 hereof; and

(iv) A Majority in Interest (defined for this purpose by excluding the transferor Member) consent to the admission of the transferee as a Substitute Member, which consent may be given or withheld for any reason or for no reason.

(b) A transferee of an Interest in a Permitted Transfer under Sections 11.2(a) and (b) shall automatically become a Substitute Member unless the transferor directs in writing to the contrary.

11.6 Rights of Assignee. A Person who acquires an Interest in the Company (other than a Person who was a Member before such acquisition) but who is not admitted to the Company as a Substitute Member, shall have only the right to receive the distributions and allocations of taxable income or loss to which the Member would have been entitled under this Agreement with respect to the transferred Interest and shall not have or enjoy any right to participate in the management of the Company, or to exercise any voting rights hereunder or to receive any financial information or reports relating to the Company or any other rights of a Member under the Act or this Agreement, unless and until the purchaser or transferee is admitted as a Member pursuant to Section 10.1 hereof.

11.7 Prohibited Transfers. Any purported Transfer of Interests that is not a Permitted Transfer shall be null and void and of no force and effect whatsoever. In the case of an attempted Transfer that is not a Permitted Transfer, the parties engaging in or attempting to engage in such Transfer shall be liable to and shall indemnify and hold harmless the Company from all loss, cost, liability and damages that the Company or any Member shall incur as a result of such attempted Transfer.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 Dissolution. The Company shall be dissolved upon the first to occur of any of the following events:

(a) The affirmative vote or written agreement of all the Members;

(b) The entry of a decree of judicial dissolution under the Act; or

(c) The sale, exchange, or other disposition of all or substantially all the assets of the Company.

It is expressly provided herein that the Company shall not be dissolved upon the occurrence of a Withdrawal Event with respect to a Manager or a Member unless there are no Members.

12.2 Liquidation, Winding Up and Distribution of Assets. A Manager shall, upon dissolution of the Company, proceed to liquidate the Company's assets and properties, discharge the Company's obligations, and wind up the Company's business and affairs as promptly as is consistent with obtaining the fair value thereof. The proceeds of liquidation of the Company's assets, to the extent sufficient therefor, shall be applied and distributed as follows:

(a) First, to the payment and discharge of all of the Company's debts and liabilities except those owing to Members or to the establishment of any reasonable reserves for contingent or unliquidated debts and liabilities;

(b) Second, to the payment of any accrued interest owing on any debts and liabilities owing to Members in proportion to the amount due and owing to each Member;

(c) Third, to the payment of outstanding principal amounts owing on any debts and liabilities owing to Members in proportion to the amount due and owing to each Member; and

(d) Fourth, to the Members in accordance with the positive balance of each Member's Capital Account as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs, including any Capital Account Adjustments associated with the allocation of Profits and Losses with respect to any transaction which results in the dissolution and liquidation of the Company. Any such distributions to the Members in respect of their Capital Accounts shall be made within the time requirements of Section 1.704-1(b)(3)(ii)(b)(2) of the Regulations. If for any reason the amount distributable pursuant to this Section 12.2(d) shall be more than or less than the sum of all the positive balances of the Members' Capital Accounts, the proceeds distributable pursuant to this Section 12.2(d) shall be distributed among the Members in accordance with the ratio by which the positive Capital Account balance of each Member bears to the sum of all positive Capital Account balances.

12.3 Deficit Capital Accounts. No Member shall have any obligation to contribute or advance any funds or other property to the Company by reason of any negative or deficit balance in such Member's Capital Account during or upon completion of winding up or at any other time.

12.4 Articles of Dissolution. When all the remaining property and assets have been applied and distributed in accordance with Section 12.2 hereof, the Manager (or such other Person designated by the Members) shall cause "Articles of Dissolution" to be executed and filed with the Nevada Secretary of State in accordance with the Act.

12.5 Return of Contribution Non-Recourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's Capital Contributions. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash or other property contribution of one or more Members, such Member or Members shall have no recourse against the Manager or any other Member.

12.6 In Kind Distributions. A Member shall have no right to demand and receive any distribution from the Company in any form other than cash. However, a Member may be compelled to accept a distribution of an asset in kind if the Company is unable to dispose of all of its assets for cash.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Notices. Except as otherwise provided herein, any notice, demand, or communication required or permitted to be given to a Member by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the Member or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's address set forth in Exhibit A. Except as otherwise provided herein, any such notice shall be deemed to be given on the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

13.2 Governing Law. This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Nevada.

13.3 Amendments. This Agreement may not be amended except by a written agreement of all of the Members. Notwithstanding the foregoing, the Manager shall be authorized to make any amendments to this Agreement which, in the opinion of counsel to the Company, are necessary to maintain the status of the Company as a partnership for federal and state income tax purposes.

13.4 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

13.5 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

13.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13.7 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement and by applicable law, their respective heirs, legal representatives, successors, and assigns.

13.8 Creditors and Other Third Parties. None of the provisions of this Agreement shall be for the benefit of, or enforceable, by any creditors of the Company or any other third parties.

13.9 Section, Other References. Except to the extent provided, references to the terms "Section," "Schedule," "Exhibit", or "Appendix" means to the corresponding Sections, Schedules, Exhibits, or Appendices of this Agreement.

13.10 Authority to Adopt Agreement. By execution hereof, each Member represents and covenants as follows:

(a) The Member has full legal right, power, and authority to deliver this Agreement and to perform the Member's obligations hereunder;

(b) This Agreement constitutes the legal, valid, and binding obligation of the Member enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy and other laws of general application relating to creditors' rights or general principles of equity;

(c) This Agreement does not violate, conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default or an event of default under any other agreement of which the Member is a party; and

(d) The Member's investment in Interests in the Company is made for the Member's own account for investment purposes only and not with a view to the resale or distribution of such interest.

13.11 Sole and Absolute Discretion. Except as otherwise provided in this Agreement, all actions that the Manager may take and all determinations that the Manager may make pursuant to this Agreement may be taken and made at the sole and absolute discretion of the Manager.

13.12 Counterparts. This Agreement may be executed in one or more counterparts each of which shall for all purposes be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

COMPANY:

SOLOMON TOWERS, LLC

By: _____
Ron Buchholz, Manager

By: _____
Charice Buchholz, Manager

MEMBERS:

Sun City Towers, LLC

Steven Trachsel

Name: Steven Trachsel

Title: Manager

Date: 3/3/05

EXHIBIT A

SCHEDULE OF MEMBERS

Member	Address	Initial Capital Contribution	First Additional Capital Contribution	% Interest

Solomon Towers, LLC
Exhibit A
Schedule of Members

Investor #	Name	Member Capital Contribution	Member Percentage Interest
1	Atocha Land, LLC C/O Tom Cirrito, Manager	$ 650,000.00	15.59%
2	Cirrito Holdings C/O Michael Cirrito, Manager	$ 150,000.00	3.60%
3	David Towers, LLC C/O Roland Lee, Manager	$ 500,000.00	11.99%
4	Lee Living Trust C/O Roland Lee, Trustee	$ 100,000.00	2.40%
5	JKAT Properties, LLC C/O James Coates, Manager	$ 250,000.00	6.00%
6	Daystream ST, LLC C/O Jan Edbrooke, Manager	$ 1,000,000.00	23.98%
7	Kang Living Trust C/O Yung Ho Kang, Trustee	$ 150,000.00	3.60%
8	The Laubach Living Trust C/O Mark Laubach, Trustee	$ 150,000.00	3.60%
9	Al & Betty Miller	$ 150,000.00	3.60%
10	Sun City Towers, LLC C/O Steven Trachsel, Manager	$ 200,000.00	4.80%
11	Tower Capital Partners, LLC C/O Sam Stafford, Manager	$ 150,000.00	3.60%
12	Dennis Krantz	$ 150,000.00	3.60%
13	CRS Properties, LLC C/O Todd Squellati, Manager	$ 200,000.00	4.80%
14	Tony & Cynthia Liardon	$ 60,000.00	1.44%
15	Timothy & Carole Hendrix	$ 32,000.00	0.77%
16	Buchholz Family Trust C/O Melody Buchholz, Trustee	$ 108,900.00	2.61%
17	The Opie-Gluska Family Trust C/O Michael Opie, Trustee	$ 90,000.00	2.16%
18	Figone Family Living Trust C/O Al Figone, Trustee	$ 78,500.00	1.88%
Total		$ 4,169,400.00	100.00%

Solomon Towers, LLC
Exhibit B
Notes to Solomon Towers, LLC

Loan #	Name	Loan Amount
1	Pensco FBO Tamara Gluska, IRA (Acct.# GL040)	$ 15,500.00
2	Pensco FBO Tamara Gluska, IRA (Acct.# GL039)	$ 18,900.00
3	Pensco FBO Michael Opie, IRA (Acct.# OP005)	$ 75,600.00
4	Pensco FBO Juan Bettaglio, IRA (Acct.# BE1BJ)	$ 200,000.00
5	Equity Trust FBO Alan J Figone, IRA (Acct. # 36929)	$ 98,500.00
6	Equity Trust FBO Janet M Figone, IRA (Acct. # 36930)	$ 23,000.00
7	Pensco FBO William E Buchholz, IRA (Acct.# BU212)	$ 82,000.00
8	Pensco FBO William E Buchholz, IRA (Acct.# BU213)	$ 62,000.00
9	Pensco FBO Melody J Buchholz, IRA (Acct.# BU214)	$ 58,000.00
10	Pensco FBO William E Buchholz, IRA (Acct.# BU216)	$ 31,100.00
11	Sterling Trust FBO Timothy Mark Hendrix, IRA (Acct.# 077536)	$ 95,000.00
12	Sterling Trust FBO Carole Ann Hendrix, IRA (Acct.# 077535)	$ 23,000.00
13	Sterling Trust FBO Millard Buchholz, IRA (Acct. # 077438)	$ 58,000.00
Total		$ 840,600.00

Solomon Towers, LLC
Exhibit B
Notes to Solomon Towers, LLC

Loan #	Name	Loan Amount
1	Pensco FBO Tamara Gluska, IRA (Acct.# GL040)	$ 15,500.00
2	Pensco FBO Tamara Gluska, IRA (Acct.# GL039)	$ 18,900.00
3	Pensco FBO Michael Opie, IRA (Acct.# OP005)	$ 75,600.00
4	Pensco FBO Juan Bettaglio, IRA (Acct.# BE1BJ)	$ 200,000.00
5	Equity Trust FBO Alan J Figone, IRA (Acct. # 36929)	$ 98,500.00
6	Equity Trust FBO Janet M Figone, IRA (Acct. # 36930)	$ 23,000.00
7	Pensco FBO William E Buchholz, IRA (Acct.# BU212)	$ 82,000.00
8	Pensco FBO William E Buchholz, IRA (Acct.# BU213)	$ 62,000.00
9	Pensco FBO Melody J Buchholz, IRA (Acct.# BU214)	$ 58,000.00
10	Pensco FBO William E Buchholz, IRA (Acct.# BU216)	$ 31,100.00
11	Sterling Trust FBO Timothy Mark Hendrix, IRA (Acct.# 077536)	$ 95,000.00
12	Sterling Trust FBO Carole Ann Hendrix, IRA (Acct.# 077535)	$ 23,000.00
13	Sterling Trust FBO Millard Buchholz, IRA (Acct. # 077438)	$ 58,000.00
Total		$ 840,600.00

(d) Section 752(c) of the Code shall be applied in determining the amount of any liabilities taken into account for purposes of this definition of "Capital Account"; and

(e) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Sections 1.704-1(b) and 1.704-2 of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. The Manager may modify the manner of computing the Capital Accounts or any debits or credits thereto (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any Member) in order to comply with such Regulations, provided that any such modification is not likely to have a material effect on the amounts distributable to any Member pursuant to Section 12.2 upon the dissolution of the Company. Without limiting the generality of the preceding sentence, the Manager shall make any adjustments that are necessary or appropriate to maintain equality between the aggregate sum of the Capital Accounts and the amount of capital reflected on the balance sheet of the Company, as determined for book purposes in accordance with Section 1.704-1(b)(2)(iv)(g) of the Regulations. The Manager shall also make any appropriate modifications if unanticipated events (for example, the availability of investment tax credits) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Company Minimum Gain" has the same meaning as the term "partnership minimum gain" under Regulations Section 1.704-2(d) of the Regulations.

"Depreciation" means, for each year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if such depreciation, amortization or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any year, Depreciation shall be determined with reference to the asset's Gross Asset Value at the beginning of such year using any reasonable method selected by the Manager.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value for any asset (other than money) contributed by a Member to the Company shall be as determined by the Manager and the contributing Member;

(b) The Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager as of the following times: (i) the acquisition of additional Interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the

APPENDIX 1

SPECIAL TAX AND ACCOUNTING PROVISIONS

A.1 Accounting Definitions. The following terms, which are used predominantly in this Appendix 1, shall have the meanings set forth below for all purposes under this Agreement.

"Adjusted Capital Account Balance" means, with respect to any Member, the balance of such Member's Capital Account as of the end of the relevant year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to this Agreement or as determined pursuant to Regulations Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in clauses (4), (5) and (6) of Section 1.704-1(b)(2)(ii)(d) of the Regulations.

The foregoing definition of Adjusted Capital Account Balance is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Capital Account" means, with respect to any Member or other owner of Interests in the Company, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To each such Person's Capital Account, there shall be credited the amount of money and the initial Gross Asset Value of the such Person's Capital Contributions as determined by the Manager, such Person's distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Sections A.2 and A.3 hereof, and the amount of any Company liabilities assumed by such Person;

(b) To each such Person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company property distributed to such Person pursuant to any provision of this Agreement as determined by the Manager, such Person's distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Sections A.2 and A.3 hereof, and the amount of any liabilities of such Person assumed by the Company;

(c) In the event any Interest or portion thereof (or other equity interest in the Company) is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest;

Company to a Member of more than a *de minimis* amount of cash or property as consideration for Interest in the Company, if (in any such event) such adjustment is necessary or appropriate, in the reasonable judgment of the Manager, to reflect the relative economic interests of the Members in the Company; or (iii) the liquidation of the Company for federal income tax purposes pursuant to Regulations Section 1.704-1(b)(2)(ii)(g);

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal its gross fair market value on the date of distribution;

(d) The Gross Asset Value of the Company's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section A.2(g) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that an adjustment pursuant to subsection (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

(e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account from time to time with respect to such asset for purposes of computing Profits and Losses.

"Member Nonrecourse Debt" has the same meaning as the term "partner nonrecourse debt" under Section 1.704-2(b)(4) of the Regulations.

"Member Nonrecourse Debt Minimum Gain" has the same meaning as the term "partner nonrecourse debt minimum gain" under Section 1.704-2(i)(2) of the Regulations and shall be determined in accordance with Section 1.704-2(i)(3) of the Regulations.

"Member Nonrecourse Deductions" has the same meaning as the term "partner nonrecourse deductions" under Regulations Section 1.704-2(i)(1). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for each Fiscal Year of the Company equals the excess (if any) of the net increase (if any) in the amount of Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year over the aggregate amount of any distributions during such Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent that such distributions are from the proceeds of such Member Nonrecourse Debt which are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(2) of the Regulations.

"Nonrecourse Debt" or "Nonrecourse Liability" has the same meaning as the term "nonrecourse liability" under Section 1.704-2(b)(3) of the Regulations.

"Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations. The amount of Nonrecourse Deductions for a Company Fiscal Year equals the excess (if any) of the net increase (if any) in the amount of Company Minimum

Gain during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Section 1.704-2(c) of the Regulations.

"Profits" or "Losses" means, for each Fiscal Year or other period, the taxable income or taxable loss of the Company as determined under Code Section 703(a) (including in such taxable income or taxable loss all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code) with the following adjustments:

(a) All items of gain or loss resulting from any disposition of the Company's property shall be determined upon the basis of the Gross Asset Value of such property rather than the adjusted tax basis thereof;

(b) Any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss;

(c) Any expenditures of the Company that are described in Code Section 705(a)(2)(B), or treated as such pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and that are not otherwise taken into account in the computation of taxable income or loss of the Company, shall be deducted in the determination of Profits or Losses;

(d) If the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or (c) of the definition of "Gross Asset Value" set forth in this Appendix 1, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses unless such gain or loss is specially allocated pursuant to Section A.2 hereof;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in determining such taxable income or loss, there shall be deducted Depreciation, computed in accordance with the definition of such term in this Appendix 1; and

(f) Notwithstanding any of the foregoing provisions, any items that are specially allocated pursuant to Section A.2 or A.3 hereof shall not be taken into account in computing Profits or Losses.

A.2 Special Allocations. The allocation of Profits and Losses for each Fiscal Year shall be subject to the following special allocations in the order set forth below:

(a) Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for any Fiscal Year, each Member shall be specially allocated items of income and gain for such year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year, determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts required to be allocated to each of them pursuant to such Regulation. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6). Any special

allocation of items of Company income and gain pursuant to this Section A.2(a) shall be made before any other allocation of items under this Appendix 1. This Section A.2(a) is intended to comply with the "minimum gain chargeback" requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Nonrecourse Debt Minimum Gain Chargeback. If there is a net decrease during a Fiscal Year in the Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then each Member with a share of the Member Nonrecourse Debt Minimum Gain attributable to such debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) an amount equal to such Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts to be allocated to each of them pursuant to such Regulation. Any special allocation of items of income and gain pursuant to this Section A.2(b) for a Fiscal Year shall be made before any other allocation of Company items under this Appendix 1, except only for special allocations required under Section A.2(a) hereof. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section A.2(b) is intended to comply with the provisions of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. If any Member receives any adjustments, allocations, or distributions described in clauses (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate as quickly as possible, to the extent required by such Regulation, any deficit in such Member's Adjusted Capital Account Balance, such balance to be determined after all other allocations provided for under this Appendix 1 have been tentatively made as if this Section A.2(c) were not in this Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount (if any) such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section A.2(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Appendix 1 have been made as if Section A.2(c) hereof and this Section A.2(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Members in accordance with their Percentage Interests.

(f) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated, in accordance with

Regulations Section 1.704-2(i)(1), to the Member or Members who bear the economic risk of loss for the Member Nonrecourse Debt to which such deductions are attributable.

(g) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset under Code Section 734(b) or 743(b) is required to be taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

A.3 Curative Allocations. The allocations set forth in subsections (a) through (g) of Section A.2 hereof ("Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Appendix 1 (other than the Regulatory Allocations and the next two (2) following sentences), the Regulatory Allocations shall be taken into account in allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the preceding sentence, Regulatory Allocations of Nonrecourse Deductions and Member Nonrecourse Deductions shall be offset by subsequent allocations of items of income and gain pursuant to this Section A.3 only if (and to the extent) that: (a) the Manager reasonably determines that such Regulatory Allocations are not likely to be offset by subsequent allocations under Section A.2(a) or Section A.2(b) hereof, and (b) there has been a net decrease in Company Minimum Gain (in the case of allocations to offset prior Nonrecourse Deductions) or a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt (in the case of allocations to offset prior Member Nonrecourse Deductions). The Manager shall apply the provisions of this Section A.3, and shall divide the allocations hereunder among the Members, in such manner as will minimize the economic distortions upon the distributions to the Members that might otherwise result from the Regulatory Allocations.

A.4 General Allocation Rules.

(a) In the event Members are admitted to the Company on different dates during any year, the Profits (or Losses) allocated to the Members for each such year shall be allocated among the Members in proportion to the Interests that each Member holds from time to time during such year in accordance with Code Section 706, using any convention permitted by law and selected by the Manager.

(b) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Manager using any method permissible under Code Section 706 and the Regulations thereunder.

(c) For purposes of determining the Members' proportionate shares of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), their respective interests in Member profits shall be in the same proportions as their Percentage Interests.

KERBYB\LAS\76384.1

A. U.S. DEPARTMENT OF HOUSING AND URB... LOPMENT

SETTLEMENT STATE...ENT

B. TY... AN

OMB No. 2502-0265

1. ☐ FHA 2. ☐ F... 3. ☐ CONV. UNINS.

4. ☐ VA 5. ☐ CONV. INS.

Camelback Title Agency, LLC
1440 E. Missouri Ave.
Suite C102-3
Phoenix, AZ 85014

6. ESCROW FILE NUMBER: 00009008-045 GC

7. LOAN NUMBER:

8. MORTGAGE INSURANCE CASE NUMBER:

FINAL

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. *Items marked "(P.O.C.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

D. NAME OF BORROWER: Solomon Towers, LLC

ADDRESS OF BORROWER: Attn : Ron Buchholz or Nicole, 20 Great Oaks Blvd.,#230
San Jose, Ca 95119

E. NAME OF SELLER: Z Lofts, LLC

ADDRESS OF SELLER: Grace Communities/Sue Pierce, 9500 E. Ironwood Square
Scottsdale, Az 85258

F. NAME OF LENDER:

ADDRESS OF LENDER:

G. PROPERTY LOCATION: 2ND Avenue & McKinley
Phoenix, AZ
Maricopa 111-40-024
Lots 15,17,19 and 21, of Bennett Place, 2/43

H. SETTLEMENT AGENT: Camelback Title Agency, LLC

PLACE OF SETTLEMENT: 1440 E. Missouri Ave., Suite C102-3, Phoenix, AZ 85014

I. SETTLEMENT DATE: 04/11/2005 PRORATION DATE: 04/11/2005 FUNDING DATE:

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. Gross Amount Due From Borrower:		**400. Gross Amount Due To Seller:**	
101. Contract Sales Price	4,000,000.00	401. Contract Sales Price	4,000,000.00
102. Personal Property		402. Personal Property	
103. Settlement charges to Borrower (line 1400)	1,004,929.15	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance:		Adjustments For Items Paid By Seller In Advance:	
106. City/Town Taxes		406. City/Town Taxes	
107. County Taxes		407. County Taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
120. Gross Amount Due from borrower:	5,004,929.15	420. Gross Amount Due to Seller	4,000,000.00
200. Amounts Paid by or in behalf of Borrower:		**500. Reductions In Amount Due To Seller:**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202.		502. Settlement charges to Seller (line 1400)	11,526.57
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. pt closing funds	1,904,000.00	504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Earnest Money pd to seller	3,100,000.00	506. Earnest Money pd to seller	3,100,000.00
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller:		Adjustments For Items Unpaid By Seller:	
210. City/Town Taxes		510. City/Town Taxes	
211. County Taxes 01/01/05 - 04/11/05	1,328.14	511. County Taxes 01/01/05-04/11/05	1,328.14
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	5,005,328.14	520. Total Reductions In Amount Due Seller	3,112,854.71
300. Cash at Settlement from/to Borrower:		**600. Cash at Settlement to/from Seller:**	
301. Gross amount due from Borrower (line 120)	5,004,929.15	601. Gross amount due to Seller (line 420)	4,000,000.00
302. Less amount paid by/for Borrower (line 220)	5,005,328.14	602. Less reductions in amount due Seller (line 52	3,112,854.71
303. Cash TO Borrower:	398.99	603. Cash TO Seller:	887,145.29

OMB No. 2502-0265

L. SETTLEMENT CHARGES: ESCROW FILE NUMBER: 00009008-045 GC

	Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Sales/Broker's Commission:		
Based on Price $4,000,000.00 @ % =		
Division of Commission (line 700) follows:		
701. $ to Keller Williams Southwest Real		
702. $ to		
$ to		
703. Commission paid at settlement		
704. Sales Tax on Commission to	1,000,000.00	
800. Items Payable In Connection With Loan:		
801. Loan Origination Fee		
802. Loan Discount Fee		
803. Appraisal Fee		
804. Credit Report		
805. Lenders Inspection Fee		
806. Mortgage Insurance Application Fee		
807. Assumption Fee		
808.		
809.		
810.		
811.		
900. Items Required By Lender To Be Paid In Advance:		
901. Interest		
902. Mortgage Insurance Premium		
903. Hazard Insurance Premium		
904.		
905.		
1000. Reserves Deposited With Lender:		
1001. Hazard Insurance		
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes		
1005. Annual Assessments		
1006.		
1007.		
1008. AGGREGATE ADJUSTMENT months @$		
1100. Title Charges:		
1101. Settlement or closing fee to Camelback Title Agency, LLC	1,207.15	1,207.15
1102. Abstract or title search		
1103. Title examination		
1104. Title insurance binder		
1105. Document preparation		
1106. Notary Fees		
1107. Attorney's Fees		
(includes above item numbers:)		
1108. Title Insurance		
(includes above item numbers:)		
1109. Lender's coverage $		
1110. Owner's coverage $ 4,000,000.00	3,597.00	5,035.80
Lender's coverage $		
Lender's coverage $		
1111. Tracking/Recon to Camelback Title Agency, LLC		75.00
1112. Endorsement 116.1-Survey to Camelback Title Agency, LLC	75.00	
1113. **See attached for breakdown	40.00	155.00
1200. Government Recording and Transfer Charges		
1201. Recording Fees: Deed$ 10.00 Mortgage $ Release $ 10.00	10.00	10.00
1202. City/County tax/stamps		
1203. State tax/stamps		
1204. City Transfer Tax		
1205. County Transfer Tax		
1206. Affidavit Of Property Value to Camelback Title Agency, LLC		2.00
1207.		
1300. Additional Settlement Charges:		
1301. Survey to		
1302. Pest Inspection		
1303. Property Taxes-All 2004 to Maricopa County Treasurer		2,465.42
1304. Property Taxes- All 2004 to Maricopa County Treasurer		2,576.20
1305.		
1306.		
1307.		
1400. Total Settlement Charges (Enter on line 103,Section J -and- line 502, Section K)	1,004,929.15	11,526.57

OMB No. 2502-0265

E... Number: 00009008-045 GC

HUD-1 Settlement Statement Certificatio.

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Buyers Signatures:

Solomon Towers, LLC,
a Nevada Limited Liability Company

By: Ron Buchholz
Its: Managing Member

Sellers Signatures:

Z Lofts, LLC,
an Arizona Limited Liability Company

By: Donald J. Zeleznak
Its: Managing Member

Settlement Agent:

Camelback Title Agency, LLC

Date:

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

OMB No. 2502-0265

Attachments:

Escrow Number: 00009008-045 GC

HUD 1113 DETAILED BREAKDOWN OF TITLE CHARGES

Description	Buyer Amount	Seller Amount
1115. Courier fee to Camelback Title Agency, LLC	20.00	40.00
1116. Wire Transfer to Camelback Title Agency, LLC	20.00	40.00
1117. Inspection to Camelback Title Agency, LLC		75.00
Total as shown on HUD Page 2 Line #1113.	**40.00**	**155.00**

9:56 AM
02/29/08
Accrual Basis

Solomon Towers, LLC
Profit & Loss
All Transactions

Ordinary Income/Expense	
Expense	
Bank Service Charges	0.00
Interest Expense	0.00
Travel Expense	0.00
Total Expense	0.00
Net Ordinary Income	0.00
Other Income/Expense	
Other Income	
Interest Income	1,144.26
Total Other Income	1,144.26
Net Other Income	1,144.26
Net Income	1,144.26

9:54 AM
02/29/08
Accrual Basis

Solomon Towers, LLC
Balance Sheet
As of February 29, 2008

ASSETS	
Current Assets	
Checking/Savings	
BofA Liquid CD	40,394.26
United Security Bank X4240	22,543.62
Total Checking/Savings	62,937.88
Total Current Assets	62,937.88
Other Assets	
Investment in Property	
Accounting	39,300.00
Acquisition	
Commissions	1,000,000.00
Acquisition - Other	4,000,000.00
Total Acquisition	5,000,000.00
Acquisition Costs	3,000.00
Architectural Fees	142,317.72
Bank Service Fees	315.00
Capitalized Interest	
Interest OOP - Mesa Bank	28,807.30
Late Charge - Mesa Bank	75.00
Int Reserve - Mesa Bank	42,593.98
Note Holders (Accrued)	592,110.93
Total Capitalized Interest	663,587.21
Construction Management	9,000.00
Consultants - Reimbursement	4,841.36
Consulting	175,069.27
Development Fees	330,000.00
Eng/Environment	9,034.12
Insurance	648.66
Legal	69,034.59
Loan Fees	25,125.00
Marketing	7,568.75
Miscellaneous	3,046.71
Permits and Fees	9,825.00
Postage/Delivery	75.87
Printing & Reproduction	3,915.11
Project Management	56,800.00
RE Taxes	17,423.48
Site Maintenance	7,917.67
Survey	276.00
Title & Closing	5,354.15
Travel	9,171.57

9:54 AM
02/29/08
Accrual Basis

Solomon Towers, LLC
Balance Sheet
As of February 29, 2008

Total investment in Property	6,592,647.24
Total Other Assets	6,592,647.24
TOTAL ASSETS	6,655,585.12
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	1,575.00
Total Accounts Payable	1,575.00
Other Current Liabilities	
Notes Payable	
Total Notes Payable	1,185,600.00
Total Other Current Liabilities	1,186,615.35
Total Current Liabilities	1,188,190.35
Long Term Liabilities	
A&D Loan - Mesa Bank	750,000.00
Accrued Interest Payable	
Total Accrued Interest Payable	436,850.51
Total Long Term Liabilities	1,186,850.51
Total Liabilities	2,375,040.86
Equity	
Total Equity	4,280,544.26
TOTAL LIABILITIES & EQUITY	6,655,585.12

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (cand rev 1-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS
STEVE TRACHSEL, ET AL.

DEFENDANTS
RONALD BUCHHOLZ, ET AL.

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
TODD A. ROBERTS, JESSHILL E. BENTLEY
ROPERS, MAJESKI, KOHN & BENTLEY
1001 Marshall Street
Redwood City, CA 94063 (650) 364-8200

Attorneys (If Known)

E-FILING

C08 02248 RS

ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury — Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA(1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☒ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
18 U.S.C. Section 1, et seq.; 17 C.F.R. Section 240.10B-5; 15 U.S.C. Section 771(a)
Brief description of cause:
Investment Ponzi Scheme, Unqualified Sale of Securities

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)
☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE 4/30/08
SIGNATURE OF ATTORNEY OF RECORD

DION N. COMINOS (SBN: 136522)
MEAGEN E. LEARY (SBN: 233103)
GORDON & REES LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

Attorneys for Defendant
KELLER WILLIAMS REALTY, INC.

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company, Plaintiffs, vs. RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive, Defendants.	CASE NO. C08 2248 **DECLARATION OF MEAGEN E. LEARY IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 [Fed. R. Civ. Pro. 12(b)(6)]** Hearing Date: September 5, 2008 Time: 9:00 A.M. Location: Courtroom 6 Judge: Hon. Ronald Whyte

I, Meagen E. Leary declare as follows:

1. I am an attorney at the law firm of Gordon & Rees LLP, counsel of record for defendant KELLER WILLIAMS REALTY, INC. I have personal knowledge of the matters set forward in this Declaration except as to those matters stated on information and belief, and as to those

matters, I am informed and believe them to be true. I make this Declaration in support of KELLER WILLIAMS REALTY, INC.'s Motion to Dismiss.

2. On May 30, 2008, attorney Dion Cominos, also counsel for KELLER WILLIAMS REALTY, INC ("KWRI") sent a meet and confer letter to counsel for Plaintiffs requesting that Plaintiffs dismiss KWRI as Plaintiffs' Complaint failed to assert any actionable allegations against KWRI. A true and correct copy of the May 30, 2008 letter is attached hereto as **Exhibit 1**.

3. On June 26, 2008 counsel for Plaintiffs transmitted a letter to Dion Cominos in which Plaintiffs' counsel refused to dismissed KWRI from the current action. A true and correct copy of the June 26, 2008 letter is attached hereto as **Exhibit 2.**

4. On July 2, 2008, counsel for KWRI, Dion Cominos sent a follow up meet and confer letter reiterating KWRI's request for dismissal. A true and correct copy of the July 2, 2008 letter is attached hereto as **Exhibit 3**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 30, 2008, in San Francisco, California.

MEAGEN E. LEARY

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT "1"

DION N. COMINOS
MEAGEN E. LEARY

GORDON & REES LLP

ATTORNEYS AT LAW
EMBARCADERO CENTER WEST
275 BATTERY STREET, SUITE 2000
SAN FRANCISCO, CA 94111
PHONE: (415) 986-5900
FAX: (415) 986-8054
WWW.GORDONREES.COM

May 30, 2008

VIA E-MAIL & U.S. MAIL

Jesshill E. Love, III, Esq.
Ropers, Majeski, Kohn, et al.
1001 Marshall Street
Redwood City, CA 94063

Re: ***Trachsel, et al. v. Bucholz, et al.***
Our Client: Keller Williams Realty, Inc.

Dear Mr. Love:

Following up on our prior communications, we write to again request that Plaintiffs dismiss our client Keller Williams Realty, Inc. ("KWRI") from the above-referenced action. In short, dismissal is warranted as Plaintiffs have failed to assert any actionable allegations against KWRI.

Specifically, Plaintiffs' lone allegation against KWRI – i.e., that KWRI is vicariously liable for the actions of ZPM – wholly fails to substantiate a claim against KWRI as the causes of action asserted against KWRI cannot be predicated on a naked theory of alleged vicarious liability. By way of background, KWRI entered into an agreement with Quanta, LLC (not ZPM), wherein KWRI granted Quanta a license to use certain KWRI software in the course of Quanta's real estate business. KWRI did not enter into any agreement with ZPM. Moreover, no agency relationship, express or otherwise, exists or existed as between KWRI and ZPM.

Plaintiffs' claims further fail as a matter of law. To begin with, even if there were some type of franchise agreement between KWRI and ZPM (which there is not), a franchisor is not liable for the acts of a franchisee unless, at a minimum, an agency relationship exists. *Cislaw v. Southland Corp.*, 4 Cal. App. 4th 1284, 1288 (1992). Whether an agency relationship exists depends on the whether the franchisor controls the day-to-day operations of the franchisee. *Cislaw*, 168 Cal. App. 3d at 1295-1296. Here, KWRI had no relationship with ZPM, and therefore exercised no control over ZPM's day-to-day operations. There are also a number of general pleading deficiencies in the actual claims for relief alleged, but we will refrain from commenting further at this time since KWRI simply does not belong in this case.

Please advise whether your clients are amenable to dismissing KWRI so that a dismissal motion and further expense can be avoided. Thank you for your attention in this matter. We look forward to hearing from you.

Very truly yours,

GORDON & REES LLP

Dion N. Cominos

MEL:scm

EXHIBIT "2"

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LAWYERS RMKB ROPERS MAJESKI KOHN BENTLEY

Todd A. Roberts
(650) 780-1601

troberts@rmkb.com

June 26, 2008

VIA FACSIMILE/U.S. MAIL

Dion Cominos
Gordon & Rees
275 Battery Street, Suite 2000
San Francisco, CA 94111

Re: Trachsel, et al. v. Buchholz, et al.
USDC, Northern District Case No. C08-02248RMW

Dear Mr. Cominos:

This shall confirm your recent conversation with Matt Zumstein requesting that plaintiffs dismiss your client Keller Williams Realty, Inc. ("KWRI") from the above-refcrenced action. We have considered you position and are unable to offer your clients a dismissal at this time.

Your citation of *Cislaw v. Southland Corp.* (1992) Cal.App.4th 1284 provides significant illumination on the area of franchisee/franchisor liability. As you know, the question of whether franchisee liability exists is ordinarily one of fact, dependent upon whether or not the franchisor exercises complete or substantial control over the franchisee. Furthermore, a motion for summary judgment to relieve the franchisor of any liability will only be granted when the essential facts are not in conflict as to whether or not an agency relationship exists between the franchisee and the franchisor.

In determining whether or not an agency relationship exists between a franchisee and a franchisor, the court will look at a myriad of factors. Specifically, the court will look to determine whether or not: (1) the franchisor was permitted to handle any or all aspects of franchisee employment, (2) whether the franchisor was allowed to determine rates for services the franchisee charged customers; (3) if the franchisor chose lenders with whom the franchisee would conduct business with; (4) the control of advertising (whether or not the franchisee was required to submit any ads to the franchisor for prior approval); or (5) the franchisor was permitted to determine franchisee agreements with third party vendors without giving prior notice to the franchisee. This non-exhaustive list is only a sampling of various factors the court can look at in order to determine whether or not Quanta LLC, Keller Williams, or Mr. Zeleznak are liable to plaintiffs for defendants' egregious activities.

In this case, the right to control the obligations and expenses of the real estate sales operation is merely one of many factors which we will use to show the court that Quanta and Keller Williams are liable to our clients. Quanta, LLC is the legal owner of the business Keller

Williams Arizona Realty located at 9500 East Ironwood Square Drive in Scottsdale, AZ. Mr. James Dunning is the designated broker for the Keller Williams Arizona Realty located at that address. In addition to Mr. James Dunning being the broker for the legal entity Quanta, LLC, he is also the Manager of Quanta. Mr. Zeleznak owns the property where the Keller Williams Arizona Realty office is located. Donald Zeleznak is one of many salespersons employed by Keller Williams at that location and Ryan Zeleznak is the branch manager for that location. It is patently clear that Keller Williams did more than simply enter into an agreement with Quanta to use certain software in the course of Quanta's real estate business.

Mr. Zeleznak travelled to California in February and June 2005 in order to make presentations and encourage plaintiffs to invest in Solomon Capital. He was introduced as a "key player" while working as a salesperson for Keller Williams and spoke at length about the benefits of the Arizona real estate market. His duties as an agent for Keller Williams involved acting as both the selling agent and buyer's broker for the Solomon Towers project. Mr. Zeleznak misrepresented that the project was being purchased for fair market value, when in fact, the land had been valued at above-market rates in order to defraud plaintiffs and benefit the defendants. Keller Williams facilitated these double escrow transactions and received 20% commission rates, the proceeds of which were used to continue to perpetuate a fraud on the plaintiffs.

As you know, a principal can be found liable for the acts of a party deemed to be an ostensible agent of the principal. It appears that plaintiffs' claims would survive any attacks on general pleading deficiencies, motions to strike, demurrer, as well as any motion for summary judgment. Liability under an ostensible agency theory is found when a party dealing with an agent has done so with the belief that the agent's authority to act on behalf of the principal is a reasonable one. Once this belief has been generated by some act on behalf of the agent or negligence on behalf of the principal, the only remaining factor which the plaintiff must show in order to recover would be that their damages were not due to their own negligence. (*Kaplan v. Coldwell Bank* (1997) 59 Cal.App.4th 741.)

The facts in this case bear striking resemblance to the *Kaplan* matter. Mr. Zeleznak relied upon the use of the Keller Williams name in order to conduct an advertising campaign, encourage investors to contribute to investment properties, and overall solicit business on behalf of both himself and the remaining defendants. Our clients' believed in Mr. Zeleznak's representations as a member of the Keller Williams family when conducting business. This belief resulted in damages to our clients. While Keller Williams did not make any specific representations to our clients personally, Mr. Zeleznak did on its behalf and Keller Williams allowed him to do so. Our clients relied on these representations. Just as the sophisticated real estate investor in the *Kaplan* matter believed Coldwell Banker stood behind its franchisee, our clients believed that Keller Williams stood behind Mr. Zeleznak.

LAWYERS
KMKB
ROPERS MAJESKI KOHN BENTLEY

Whether liability exists under ostensible agency will depend upon a question of fact which will be implied from the totality of the circumstances at the end of the discovery process. For summary judgment purposes, it will be sufficient for the court to observe that a triable issue of material fact was not presented in the *Cislaw v. Southland* matter. Nothing in *Cislaw* compelled the court to find liability under an ostensible agency theory because the plaintiffs did not present any facts to support the issue of ostensible agency. It is beyond argument that the evidence in this matter clearly supports the existence of an ostensible agency theory and will allow plaintiffs to survive any summary judgment motion.

Thank you for your attention in this matter. We look forward to discussing with you any further questions, problems, or concerns you may have.

Very truly yours,

Todd A. Roberts

TAR:mc

cc: Julie Lane, General Counsel, KWRI: (via e-mail: Julie.Lane@kw.com)
Kathleen McWilliams (via e-mail: Kathleen.McWilliams@kw.com)

RC1/5133674.1/MC2

EXHIBIT "3"

DION N. COMINOS
DCOMINOS@GORDONREES.COM
DIRECT FAX: 415-262-3714

GORDON & REES LLP

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July 2, 2008

VIA FACSIMILE

Todd A. Roberts, Esq.
Ropers, Majeski, Kohn & Bentley
1001 Marshall Street, Suite 300
Redwood City, CA 90463

Re: *Steve Trachsel, et al. v. Ronald Buchholz, et al.*
U.S.D.C., No. Dist., San Jose Div., No. C08 02248

Dear Mr. Roberts:

Thank you for your letter of June 26, 2008. While I appreciate your efforts at providing a rationale for maintaining the present litigation against KWRI, the reality is that no proper legal or factual bases exist to, such that an immediate dismissal is warranted.

As a threshold matter, it is important to understand that KWRI is a wholly distinct and separate legal entity from the broker against whom a majority of plaintiffs' claims appear to be directed. Further, it is manifest that KWRI: (1) does not handle its franchisees' employment matters; (2) does not determine the rates of services charged by its franchisees to their customers; (3) does not select the lenders with whom its franchisees deal; (4) does not choose the third party vendors who work with the franchisees; (5) was not involved in franchisees' advertising other than specifying guidelines for use of its trademarks and logos; and (6) obtains no commissions from the franchisees' sales. Apart from this being the actual state of affairs, plaintiffs' complaint is itself devoid of any allegations that would suggest to the contrary.

If you or your clients are in possession of any facts which suggest that KWRI itself (as opposed to Quanta or some other entity) is an appropriate party to this litigation, please provide same for our consideration. Otherwise, we will remain of the view that this litigation is being prosecuted against KWRI in bad faith and without probable cause. We therefore again

respectfully reiterate our request for a dismissal of KWRI failing which we will have no choice but to proceed with dismissal motions and associated activities.

Very truly yours,

GORDON & REES LLP

Dion N. Cominos

DNC:bls
cc: Julie Lane, Esq.

: Steve Trachsel, et al. v. Ronald Buchholz, et al.
United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

PROOF OF SERVICE

I am a citizen of the United States. My business address is 275 Battery Street, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within action.

On July 30, 2008, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

DECLARATION OF MEAGEN E. LEARY IN SUPPORT OF MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 [Fed. R. Civ. Pro. 12(b)(6)]

☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM**: with the United States District Court, Northern District, to all parties listed on the court's proof of electronic service.

☐ **BY FACSIMILE**: by transmitting by facsimile to the number(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

☐ **PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ **MAIL**: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California to the offices of the addressee(s) listed below:

☐ **OVERNIGHT DELIVERY**: I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2008 at San Francisco, California.

Sandra Sarmiento

Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO. C08 2248

[PROPOSED] ORDER GRANTING DEFENDANT KELLER WILLIAMS REALTY, INC.'S MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18
[Fed. R. Civ. Pro. 12(b)(6)]

Hearing Date: September 5, 2008
Time: 9:00 A.M.
Location: Courtroom 6
Judge: Hon. Ronald M. Whyte

Upon consideration of Defendant KELLER WILLIAMS REALTY, INC.'s Motion to Dismiss, any opposition thereto, and for good cause shown, it is on this 5th day of September, 2008, hereby ORDERED that Defendant's Motion to Dismiss is GRANTED,

and it is FURTHER ORDERED that the Clerk of this Court shall dismiss defendant KELLER WILLIAMS REALTY, INC. from this action.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

Steve Trachsel, et al. v. Ronald Buchholz, et al.
United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

PROOF OF SERVICE

I am a citizen of the United States. My business address is 275 Battery Street, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within action.

On July 30, 2008, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING DEFENDANT KELLER WILLIAMS REALTY, INC.'S MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16 AND 18 [Fed. R. Civ. Pro. 12(b)(6)]

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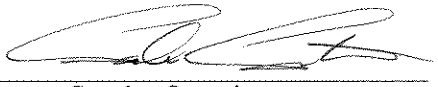
☐ **OVERNIGHT DELIVERY**: I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2008 at San Francisco, California.



Sandra Sarmiento

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